Supreme Court, U.S.
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92-511

No. 813

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

WILLIAM ANDREW ORTMAN, PETITIONER

v.

ORTMAN BROS.; CERTAIN LAWYERS, JUDGES

AND COURTS OF MICHIGAN

PETITION FOR A WRIT OF CERTIORARI

TO THE MICHIGAN COURT OF APPEALS

WILLIAM ANDREW ORTMAN, P18540
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June 29, 1992

QUESTIONS PRESENTED

I.

MAY STATE JUDGES VIOLATE ARTICLE VI OF THE UNITED STATES CONSTITUTION PROVIDING THAT JUDGES IN EVERY STATE ARE BOUND BY THE CONSTITUTION AND DOES SUCH VIOLATION IMMEDIATELY CALL FOR AN EXERCISE OF THE SUPREME COURT'S SUPERVISORY POWERS ?

II.

WHETHER THE UNITED STATES SUPREME COURT WILL GRANT CERTIORARI WHERE A STATE COURT JUDGE, WITHOUT ANY JURISDICTION, VIOLATES A CITIZEN'S CIVIL AND CONSTITUTIONAL RIGHTS UNDER COLOR OF LAW AND DEPRIVES SUCH CITIZEN OF HIS LIBERTY AND PROPERTY IN VIOLATION OF CONSTITUTIONAL GUARANTEES, RIGHTS, PRIVILEGES AND IMMUNITIES ?

III.

DO PROVISIONS OF A STATE CONSTITUTION PROHIBITING RECALL OF JUDGES;[1] ESTABLISHING BALLOT DESIGNATIONS[2]; ESTABLISHING LAWYER AND JUDICIAL COMMISSIONS TO CONTROL LAWYERS AND JUDGES CONDUCT; [3] DENY EQUAL PROTECTION OF THE LAWS AND SUBVERT THE UNITED STATES CONSTITUTION?

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[1] MCL, Const, 1963, Art. 6, Sec. 4

[2] CONST. 1963, Art. 2, Sec.8

[3] Art. 6, Sec. 24; Art. 6., Sec. 22; Art. 6, Sec. 30

RULE 14 (b) LIST

The parties to the proceedings below were your Petitioner and the respondents who conspired with others to violate petitioners civil and constitutional rights and include:

John R. Ortman, petitioner's brother and individual joint owner of real estate parcels; James F. Ortman, petitioner's other brother and individual joint owner of undivided interest in real estate; Ralph J. Kliber, bookkeeper/lawyer who secreted and/or destroyed Amended Appointment Of Successor Trustee under void living trust of petitioner's deceased Father, Frank J. Ortman; Kliber also conspired with Richard Condit, probate judge Eugene Arthur Moore to appoint him as a co-conservator of Marcella G. Ortman, mentally incompetent estate; Richard Condit is an Oakland County lawyer who alleges backstairs connections with Oakland County, Michigan judges by virtue of having been a court clerk for judge Moore's father. Condit was allegedly hired by John and James Ortman to protect Kliber from justice. John O'Brien was probate judge who was removed from office, having been convicted of a crime while a sitting judge. Donald James, a Michigan district court judge in Kalamazoo who relinquished jurisdiction to court without jurisdiction. Wm. Schma, Kalamazoo circuit judge who gave petitioner's property to strangers by secret summary proceedings; Wm. Schaefer, Kalamazoo circuit judge who refused to issue ex parte restraining order stating circuit court had no jurisdiction; Miller, Canfield, Paddock & Stone, large law firm which filed frivolous circuit court suit naming trespassers as Plaintiff against The Ortman Company, former assumed name for three Ortman brothers; Judge Baguley, Lapeer circuit judge to whom original cause was assigned in suit for partition filed in accordance with state statute requiring filing in court where property situate; Judge Mester, Oakland County, Michigan circuit judge who dismissed superintending control complaint in probate proceedings summarily. Judge Mester mysteriously appeared as judge of record in Oakland county suit filed by Richard Condit while identical suit was pending in Lapeer County, Michigan as complaint showed it was assigned to a judge Andrews. Richard Litke and his spouse appeared on title policy as purchasers of Kalamazoo property belonging to petitioner and his two brothers.

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JURISDICTIONAL STATEMENT

WILLIAM ANDREW ORTMAN, Petitioner, respectfully prays that a writ of certiorari issue to review proceedings and decisions of state courts contrary to ARTICLE VI of the UNITED STATES CONSTITUTION and in violation of Petitioner's civil and FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH and FOURTEENTH AMENDMENT rights under the UNITED STATES CONSTITUTION.

On May 5, 1992, Justice Stevens ordered that the time for filing this petition for writ of certiorari be extended to and including June 29, 1992.

Petitioner has sought the discretionary review by the Michigan Supreme Court, the highest state court, on several occasions, which court has continually declined to exercise its authority.

OPINIONS BELOW

The June 25, 1991 Per Curiam opinion of the Michigan Court Of Appeals reciting: "Appellant's claim of violations of due process and equal protection of the laws are meritless." is clear and convincing evidence that Petitioner properly raised specific violations of his civil and Constitutional rights under the UNITED STATES CONSTITUTION in the trial courts and pursued these federal questions on appeal to higher courts and which the state's highest court declined to exercise its authority on January 31, 1992.

CONSTITUTIONAL PROVISIONS

ARTICLE VI Debts; supremacy; oath

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Offices, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any office or public Trust under the United States.

AMENDMENT IV Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice

put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due proces of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI Jury trial for crimes, and procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII Civil trials

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII Excessive bail, fines, punishments

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted.

AMENDMENT XIV Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

HOW THE FEDERAL QUESTION WAS RAISED

At the earliest stage of the proceedings below, Petitioner raised the claim of unconstitutionality under Amendments V and XIV when the Lapeer court stated that it was going to dismiss the complaint filed before it in accordance with statute because the opposing lawyer had filed the identical suit in a different and prohibited court during the pendency of the original suit.

Petitioner further and additionally raised the claim before the court without jurisdiction at the earliest stage of the second proceeding upon a motion to dismiss/summary disposition as another action had been initiated and was presently pending involving the same claim between the same parties asserting violations of civil rights and Constitutional protections. Petitioner further asserted violation of his rights under the XVI Amendment to the United States Constitution.

Petitioner asserted his right to freedom from issuance of a bench warrant for his arrest without probable cause under the IV AMENDMENT and the right of people to be secure in their persons, houses, papers and effects from constant fear of illegal and false arrest by sheriff deputies upon the direction of Judge Mester, a judge of a court without any jurisdiction by law.

Petitioner asserted his rights under AMENDMENT V and VI not to be deprived of his liberty and property when arbitrarily ordered to be falsely arrested, manacled and chained like a beast without any due process of law so that Judge Mester could extort Petitioner's property without any due process, the judge stating that he was holding Petitioner in criminal contempt of court without even apprising Petitioner of any alleged charges.

Petitioner advised Judge Mester that he was violating Petitioner's VIII AMENDMENT rights by falsely arresting Petitioner; imprisoning him for a period of time beyond his authority if he was accorded due process and that such treatment constituted cruel and unusual punishment for Petitioner having committed no offense and that the ordering of a Fifty Thousand Dollar Cash bond constituted excessive bail.

Petitioner advised probate judges that their actions in assisting Kliber and Condit in illegally dissipating estate assets violated the constitutional rights of citizens to pass their property to their

heirs under the XIV AMENDMENT.

Petitioner apprised Judge Schma of the Kalamazoo court that he was violating the Fourteenth Amendment to the United States Constitution by confiscating Petitioner's property without due process of law.

Background

The dominant theme of this petition is that petitioner has repeatedly been denied the due process of law in his attempts to challenge the over-reaching conduct of lawyers who have usurped and abused their authority in the administration of the affairs of petitioner's late parents. The purported successor trustee, one Ralph Kliber, has been heard to boast of his access to and favorable influence over the courts and judges. One of the key appellate judges in this matter was confronted upon the advice of another judge, in chambers, admitted bias toward opposing counsel and when requested to recuse himself for prejudice; he said he would consider it and refused to do so. The same judge was also requested to disqualify himself formally upon written application and still refused.

Of the many instances of disappointment with the operation of the system of justice in Michigan, three stand out as examples of oppression that cry out for the superintendence of the Supreme Court of the United States, to provide due process and fair minded justice in the instant case and to provide this honorable Court an opportunity to announce the outer parameters beyond which judicial conduct may not be permitted to stray under the Constitution of the United States.

Individually, the three instances may comprise individual lapses, examples of possible mal-administration of justice. Taken together, however, these incidents have diminished your petitioner's long love for the law and have threatened the very quality and enjoyment of life for your petitioner and his family.

The first incident constitutes an abuse of the Michigan Circuit Court's contempt powers, and other sanctions, grounded on a mis-apprehension of facts of record in the court's files, supported by an intermediate appellate court, the appeal of which was refused by the state's highest court. As a result, petitioner has been punitively sanctioned with fines in excess of the authority under the court rules, incarcerated, under continuous threat of further incarceration which has interfered with his appearances in court.

The second incident involves a complex sequence of assumptions and rejections of jurisdiction of a matter, finally leading to assumption of jurisdiction over real property, the owners of which were not parties to the action, and an ex-parte order requiring transfer of the

property to a stranger from which no consideration has reached the owners of the property.

The final instance, which arose from the first, concluded in the appointment of an alleged friend of a judge to partition and sell property of the petitioner, ordered by a court of improper venue, and with no jurisdiction, sold at less than the value of the property from a recent partial sale, as regards which no consideration has reached the owners of the property.

Attempts at appeal, in each instance, have been Kafkaesque. In one, they have been met with further abuses of the court's power to sanction based on the misapprehensions of the court's file.

Petitioner asserted his Constitutional rights as hereinbefore enumerated before the various lower courts, Michigan Court Of Appeals and in applications for leave to appeal to the Michigan Supreme Court.

It is clear and unequivocal that the Michigan Court Of Appeals considered and expressly rejected these federal constitutional claims and is guilty of insidious and invidious discrimination as well as misfeasance, malfeasance and non feasance as regards this matter and that such blatant disregard of the mandates of the United States Constitution could cause the collapse of the entire nation by undermining the fundamental notion of fairness and fair play which should be afforded all citizens by their government.

STATEMENT OF THE CASE

Petitioner has been a practicing attorney in Michigan for 29 years. Petitioner is an American citizen and patriot who volunteered and served in the United States Army for three years during the Korean Conflict and received an Honorable Discharge.

In 1981, Petitioner's Father, Frank J. Ortman, an Army veteran of World War I and lawyer for 56 years, died suddenly at 81 years of age.

Following Mr. Ortman's death in September, 1981, Ralph J. Kliber (Kliber), Richard Condit (Condit) and their associates have acted in furtherance of an agreement and conspiracy with other persons, including lawyers and certain judges of various courts of Michigan, acting under color of law, to deprive Petitioner of his civil rights and privileges and immunities secured by the Fourth, Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States.

These nefarious co-conspirators have victimized Petitioner and[7] violated fundamental principles of judicial fair play by taking Petitioner's liberty and falsely imprisoning Petitioner in order to take away his property by extortion under color of law.

The misdeeds involved probate, and civil matters and include improper criminal contempt sanctions in order to permit judges, acting under color of law, to victimize petitioner and extort his real and personal property. At this very moment the conspirators are attempting to utilize courts to enforce collection of illegal and unjust sanctions, summarily imposed, under threat of false imprisonment. Petitioner and his family members are forced to live in terror and fear of false arrest again by police or brown shirted deputy sheriffs at their door.

The first such matter involves probate proceedings and misfeasance, malfeasance and non-feasance by certain judges of various courts; fraud; violations of ARTICLE VI of the U.S. CONSTITUTION by several of such judges and numerous deprivations of this citizen's XIV AMENDMENT rights.

Frank J. Ortman, deceased, left a valid will to govern admini-

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[7] Physicians testimony from medical records at court hearing.

stration of his estate. Kliber, the family bookkeeper/tax preparer, seized control of all estate assets under a purported living trust (trust) which he had influenced decedent to prepare after decedent had suffered a stroke and decedent's widow, Marcella, a subdural hematoma leaving her non compos mentis , shortly before Mr. Ortman's demise. Frank and Marcella were joint grantors. Kliber refused to produce a copy of the trust or any amendments thereto although the same was continuously demanded by your Petitioner.

Despite repeated demands to register the trust as required by Michigan law[8], Kliber continuously refused. After several years, Kliber registered the alleged trust in Oakland County, Michigan and his law partner, Gerald Simon (Simon), yet another purported co-successor trustee, registered the purported trust in Wayne County, Michigan. Each filed false affidavits that the instrument was not registered in any other county.

Shortly prior to his death, decedent told Petitioner that he had been influenced by Kliber to create a trust as a tax avoidance document and to name Kliber as successor trustee. Decedent stated that he thought he had been given bad advice and had taken steps to correct his prior action by removing Kliber; e.g., appointing another in his place. Subsequently, Petitioner discovered a copy of an AMENDMENT to the alleged trust, in fact, designating one Hazel M. Nesbitt to act in grantors place and stead in connection with the administration of said purported trust. It is believed Kliber secreted or destroyed the original, AMENDMENT, but the copy shows the intent of the settlor in the event the alleged trust instrument ever survived the challenge that it was void ab initio as at least one of the settlor was non compos mentis when it was created.

Kliber induced the mentally incompetent widow to sign checks for large amounts of money payable to Kliber or his law partners by displaying a stack of U.S. bills of small denomination and promising to exchange the bills for her signature on checks and complex legal documents designed to enrich Kliber & associates. Petitioner asserted a conflict of interest on the part of Kliber.

It was discovered that Kliber, Simon and their associates de-

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[8] MCL (1979) 700.804

scended on the defenseless widow when she was alone in her home and frightened her into signing complex wills, powers of attorney, and the like, for the benefit of such lawyers. If challenged they would fraudulently attest to her mental competency.

The widow's physical and mental state declined to the point that it was necessary to have her confined to a nursing care facility for her own protection; petitions were filed in court seeking to have her become a court protected person.

Kliber opposed having Marcella cared for opining "she will die soon anyway", and took his fellow conspirator Condit (an Oakland County lawyer with self-proclaimed backstairs influence with county judges) to Lapeer, Michigan[9] for a secret meeting with John and James Ortman, Petitioner's brothers. John is an invalid and confined to a nursing home in Lapeer. James lived in the state of Iowa. The stated purpose of the meeting was to have John and James "hire" Condit to protect Kliber and oppose all attempts to care and protect the widow so that Kliber could continue "administering" the estates.

The evidence presented in court concerning Marcella's physical and mental incapacity and inability to care for herself was insurmountable. The court declared her non compos mentis and a protected person. However, probate judge Moore would thereafter consistently assist Messrs. Kliber, Condit and Simon repeatedly in their administration of the estates. For example[10], Kliber visited Mrs. Ortman at the nursing home immediately after the judge declared her mentally incompetent, and procured her signature on a check for many thousands of dollars payable himself. Judge Moore not only summarily dismissed the properly issued show cause order, but unlawfully appointed Kliber as a conservator of Mrs. Ortman's estate.

Judge Moore ordered transfer of the sum of almost seventy thousand dollars from the estate of Marcella Ortman deceased to Kliber and Simon instead of the heirs and an additional sum of $7,181.97 dollars to Condit for alleged services performed for John and James. The services for which payment was ordered were with regard to an appeal, rendered subsequent to dismissal of the appeal and the opinion stating: "We retain no further jurisdiction."

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[9] testimony at court hearings.

[10] court record.

Kliber further fraudulently misrepresented to the heirs that he would handle the decedent estate of Frank Ortman without charge as he was the alleged trustee under an alleged trust and induced the heirs to sign declinations of trust as regards the last will and testament wherein the three sons, William, John and James were named as executors. Kliber further fraudulently procured waivers of notice as regards closing the estate and attached them to petitions or pleadings of which the heirs received no notice.

Kliber further formed some sort of corporation called ORT-FAM,Inc. for the sole purpose of depositing rent money from a property lease in the Mr. Ortman's estate and later violated court orders enjoining him from conducting any present. This estate was apparently closed and orders approved giving Kliber enormous sums of moneys as purported fees by a probate Judge O'Brien who refused to conduct hearings and was later removed from the bench for dishonesty.

Probate judge Moore would subsequently refuse to consolidate the matters and appointed John and James Ortman as co-fiduciaries along with Petitioner although John and James were ineligible for such appointment under the statutes of Michigan. John stated he was incapable and James resided out of state. Petitioner represented Marcella Ortman's estate and filed appeals to correct the diminution of the estate by Kliber and Condit who each claimed they were hired by said John and James. Judge Moore allowed and approved fees to each from the estate while disallowing petitioner's request for fees for defending the estate.

The Michigan law is that such fees cannot be paid to outside attorneys such as co-conspirator Condit as he did not perform any service which would benefit the estate.

Petitioner even went so far as to agree to a settlement which failed for lack of legal implication to which Kliber changed or inserted pages after execution and which were filed with several courts by way of fraud and deceit.

Petitioner filed a complaint for superintending control to the county circuit court which were assigned to a Judge Mester who would enter two orders for control against the probate court and subsequently, without hearing, summarily dismissed the complaint.

The Michigan Court of Appeals, by certain judges and panels, have invented findings of fact not of record; contradicted and/or

misstated case law; refused to follow statutes; summarily dismissed appeals without providing reasons; arbitrarily levied fines against your petitioner labelled sanctions; refused to recuse themselves when challenged; and filed untruthful grievances with the attorney grievance commission attempting to use their influence as judges to have petitioner reprimanded and/or disbarred for attempting to obtain Constitutional protections. The ultimate fact is that these state judges have refused to follow the mandates of the United States Constitution, Article VI.

The Michigan Supreme Court accepted and logged the appeal of these cases and then some time later returned the appeal, the Clerk saying they were not timely.

The second such matter involves civil proceedings without jurisdiction and misfeasance, malfeasance and non-feasance by certain judges of various Michigan courts acting under color of law.

The three Ortman brothers held various real properties as joint tenants, formerly registered under the name of The Ortman Company, an assumed name registration in Lapeer County, Michigan, which was allowed to expire. No partnership ever existed, but if it had, its property would have devolved by operation of law to the individual owners. One such property was located in Kalamazoo, Michigan and consisted of real estate and a building subject to a lease. After the lease expired, the brothers agreed to sell the property. One brother, James Ortman, took it upon himself to lease the premises in the name of a different unregistered assumed name which he called The Ortman Co., to two brothers named Halliday; and misappropriated the rent proceeds for his own use. Petitioner received no share in the rents. Petitioner was requested to file landlord-tenant proceedings in a state district court which had exclusive jurisdiction as regards such matters to recover possession from trespassers and did so. District Judge Donald James dismissed the proceedings, at the request of certain lawyers [Miller,Canfield, Paddock & Stone] and thereafter adjourned the matter indefinitely on the basis that such attorneys (who filed no appearance) were to obtain a restraining order.

In fact, petitioner was contacted by a Judge Schaeffer who informed Petitioner that he was a Kalamazoo circuit judge and was conducting a hearing under a court rule as regards issuance of an injunctive order restraining landlord-tenant proceedings as regards

property owned by Petitioner. Petitioner pointed out that the circuit judge had no jurisdiction and said judge stated that he was so ruling and returning the pleadings to Miiler, Canfield lawyers with instructions for them to return the file to the clerk's office and inform the clerk that the motion was denied.

Rather than obeying the judge's order, the Miller, Canfield lawyers went to another judge and obtained a restraining order, ex parte and contrary to law. Petitioner, an owner of such subject matter real estate, was never given notice of the suit. However, within the time permitted for answer, Petitioner travelled to Kalamazoo, purchased a copy of the pleadings from the court and filed a special appearance contesting jurisdiction so that default could not be entered against the owners. Upon inquiry, Miller, Canfield divulged that they represented a purported interested purchaser who was a stranger to the expired lease on the referral of a Ralph J. Kliber (Kliber) whom they regularly contracted with and who had stated he represented the other two owners. Miller, Canfield had discovered that the property was registered in an assumed name, The Ortman Company, previously utilized by the owners. They had commenced a frivolous suit on behalf of trespassers, in the wrong court, as exclusive jurisdiction was in the state district court. Miller, Canfield also volunteered that Kliber had also hired a law firm down the street to cooperate in the matter.

Petitioner filed a motion for dismissal of the circuit suit based upon lack of jurisdiction and it being frivolous. Thereafter, a Miller, Canfield lawyer requested an adjournment due to the press of other business and stipulation and order was entered. Instead, such Miller, Canfield lawyer secretly filed its own motion and without any notice, nor trial, Kalamazoo circuit judge William Schma, in spite of a signed order for adjournment before him, ex parte, ordered the transfer of Petitioners property to strangers, without consideration and avoiding the necessity of the legal owners execution of any documents which could effect a transfer of ownership interest.

The Michigan Court of Appeals, acting in disregard of Michigan Supreme Court Administrative Orders and asserting facts not of record, and in violation of United States Constitutional mandates, of fair play and due process, summarily and arbitrarily dismissed the appeal in contravention of such Constitutional rights.

The Michigan Supreme court denied leave to appeal.

The next matter of deprivation of property without regard to constitutional protections involves property belonging to family members which had been acquired as remaindermen; James Ortman agreed to pay the taxes on said property as they became due from proceeds of rentals of other jointly owned property. Petitioner repeatedly demanded copies of tax bills from the county treasurer who agreed to furnish them, but in fact did not.

Instead, Petitioner learned that James Ortman, upon the advice of his lawyer Ralph J. Kliber (Kliber) had withheld the payment of rent money acquired from rental of other family held property designated to pay taxes until a tax sale of the property and then used the money to fraudulently purchase the property at tax sale and have it placed in the names of himself and his spouse. Again, repeated demands to restore the property to its former ownership have fallen on deaf ears.

In desperation, Petitioner filed suit in Lapeer County, Michigan seeking partition of real property in accordance with a state statute; an accounting; formal dissolution of any/all alleged business entities of any kind, nature and/or description which purportedly existed; and other relief. Lapeer circuit judge Baguley to whom the case was assigned, acted immediately and appointed a Receiver, a Partition Commissioner and issued customary restraining/injunctive orders against the defendants, their servants, agents, lawyers and the like.

Lawyer Condit filed an appearance on behalf of John and James Ortman and on behalf of fictitious business entities in an attempt to have Petitioner finance his fabricated charges for alleged legal services.

While the Lapeer suit was pending, Condit also filed the identical suit in Oakland County, Michigan. The suit was assigned to a Judge Andrews and re-assigned to Judge Mester, the judge to whom the probate matters had been assigned for superintending control and summarily dismissed without hearing. Proper motion for dismissal was brought by Petitioner.[11] Both state and federal cases hold that when a court is without jurisdiction of subject matter, any action with respect to such cause, other than to dismiss it, is absolutely void; its acts and

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[11] MCR 2.116; In Re Braver, 51 F.2d 123 (1931, Affirmed 59 F.2d 905)

proceedings are of no force nor validity and are mere nullity. In the instant matter, state law requires the filing of partition suits in the county where the property is situate. Judge Mester refused to dismiss the void proceedings. Petitioner appealed to the Michigan Court Of Appeals. The filing of a Claim Of Appeal divests the circuit court of jurisdiction.[12] In retaliation for filing the appeal, Judge Mester summarily assessed a sanction against Petitioner ordering Petitioner to give the sum of $300. dollars to attorney Condit or be imprisoned. Petitioner filed a motion to disqualify Judge Mester for bias and prejudice for summarily holding Petitioner in contempt without any evidentiary hearing nor trial nor explanation of charges. Judge Mester then entered orders on the merits of the proceedings without trial and/or evidentiary hearing and ordered Petitioner to make an accounting and pay monies into court or in the alternative to be found in further contempt and imprisoned.

Petitioner filed several appeals before the Michigan Court Of Appeals re-asserting violations of U.S. Constitutional rights under the 5th and 14th Amendments. Such appeals were not only arbitrarily and summarily dismissed, but Petitioner was falsely fined/ sanctioned in the amount of $3,586.70, such appellate court panel finding the conclusion that truth and exposure of corrupt judges "was an affront to the court"; and further, that violations of constitutional rights; such as, due process and equal protection, are discretionary with any judge. The intermediate appellate court itself violated state supreme court orders by overriding decisions of other panels for the sole purpose of further sanctioning Petitioner and rewarding opposing counsel.

In the interim, Judge Baguley, upon a hearing scheduled for continuation of restraining orders, arbitrarily and perhaps as a sanction, dismissed the cause.[13] Petitioner immediately asserted to the court that such dismissal deprived your Petitioner of his constitutional rights of both the state and U.S. Constitution, citing Amendments V. and XIV. as regards Petitioners rights to have access to courts for due

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[12] MCR 7.208; a host of Michigan cases

[13] MCR 2.504 (B) (2) says that if the court renders judgement on the merits against the plaintiff, the court shall make finding as provided in MCR 2.517. MCR 2.504 (B) (3) says that a dismissal operates as an "adjudication on the merits".

process and denial of equal protection of the laws. An appeal was filed to the Michigan Court Of Appeals. In addition to the automatic stay provided by law, Petitioner filed for entry of a Stay Order (Granted) and for the court to determine an Appeal Bond (which was furnished and approved by the court.)

The Michigan Court of Appeals entered one of its infamous PER CURIAM opinions making findings of facts not of record as regards existence of business entities; substituting "findings" for that of the trial court by inferring that the trial judge had "dismissed" the cause for "judge shopping"; fabricating a "pending" suit when not only was there no such suit, but such a suit would necessarily be filed in the wrong forum; and suggesting that Petitioner had failed to file a (false) statement that there was another action pending before the court. The appellate court, in error, stated the unsupported conclusion that the dismissal was warranted as a sanction. The appellate court more or less generalized constitutional protections and stated a conclusion that one who suffers the sanction of dismissal cannot claim deprivation of constitutional rights.

Some three years later, while this matter was on appeal to the Michigan Supreme Court, the Lapeer court would defy the three stays provided by law and make findings in error that Petitioner had failed to check a box as regards whether or not there was or was not a case already pending before the court[14] upon filing and direct a further sanction be paid Condit in the amount of $10,374.58 This was done without trial nor evidentiary hearing and after Petitioner had filed disqualification motion which the judge refused to hear and summarily and arbitrarily dismissed such motion contrary to law and the U.S. Constitution, Amendment XIV. Thereafter Condit would attempt to utilize contempt proceedings for collection purposes. Both Condit and the Judge Baguley had police harass and threaten Petitioner, in open court, to be silent in attempting to represent himself and the Receiver as the duly appointed attorney for the lawful Receiver; or be physically ejected from court by deputies.

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[14] A certified copy of the Summons and Complaint shows conclusive evidence that Petitioner complied with the court rule.

The Kalamazoo lawyers, in conspiracy with Condit, ignored the duly appointed and qualified Receiver and attempted to have a lawful appeal dismissed.

Mester, the Oakland County circuit judge without jurisdiction announced that he was going to appoint his "chum" (his improvident characterization) to sell Petitioner's real estate and pay the judge's pal at the rate of $150.00 per hour from the proceeds of sale. Mester further announced that he was going to appoint a starving lawyer friend to defend his "chum" from any lawful action Petitioner might have and pay him at the rate of $200 dollars per hour.[15] Judge Mester implemented his conspiratorial plan.

Judge Mester issued a bench warrant for Petitioner's arrest without any probable cause and ordered deputy sheriffs to harass and attempt to arrest Petitioner on a daily basis at Petitioner's residence for weeks or months.

Judge Mester would next order Petitioner falsely arrested while Petitioner was appearing in court and immune from such arrest, manacled and chained and sentenced to prison for 60 days while setting bond at $50,000. cash for the reason that Petitioner had filed a lis pendens in a different suit.[16] Petitioner immediately asserted that the action of Judge Mester violated his Fourth, Fifth, Sixth, Seventh, Eighth and Fourteenth U.S. Constitutional Amendment rights.

Petitioner was released from prison only after being coerced into signing blank sheets of paper on which Judge Mester wished to act as a witness. Thereafter, the lawyer friend of Mester's, appointed by him in this civil case, would commit an unlawful breaking and entry into Petitioner's home under the pretext that he wished to serve an

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[15] MCR (1992) 7.208 (D) provides that when an appeal is filed while property is being held for conservation, THAT COURT RETAINS JURISTICTION OVER PROPERTY PENDING THE OUTCOME OF THE APPEAL, . . . ;e.g., the Lapeer Court. Oakland County judge Mester had no juristiction.

[16] By Michigan statute, Mester was only empowered to sentence anyone to jail for 30 days and fine them $250. After a trial and constitutional protections were afforded. MCL (1979) 600.1701 et seq., as amended, P. A. 228, Acts of 1983, and P. A. 99, Acts of 1987.

unlawful order shortening time for Petitioner's appearance; this was unlawful notice of hearing as Mester had discovered from Petitioner's notice of his vacation schedule that he would be absent from the state. The order called for service prior to the time that it was thrown on Petitioner's lawn.

Subsequently Petitioner would learn that in his absence and without any notice, the parties appointed by Mester had purportedly sold 64 acres of Lapeer property valued at $640,000 for $85,000. and pocketed the proceeds. Judge Mester also entered an order that Petitioner owed an additional $20,000 to persons unspecified.

In addition, during Petitioner's absence from the state on a regularly scheduled vacation, Judge Mester of the Oakland County Michigan court had, under color of law, apparently seized Petitioner's real property in Texas consisting of a full section of land and ordered it sold for one hundred dollars an acre. The alleged proceeds were again divided among individuals appointed by Judge Mester.

Judge Mester, along with Judges Baguley, Sullivan, Danhof, Cavagnagh and Doctoroff also refused to remove/recuse themselves though challenged or personally involved, biased and prejudiced; this conduct also violates Petitioner's Fifth and Fourteenth Amendment rights.

Each and every violation of Petitioner's civil and Constitutional rights was reported to appropriate authorities including the United States Attorney; the Michigan attorney general; the Judicial Tenure Commission; the Attorney Grievance Commission; the Civil Rights Commission; county prosecutors; local police and sheriff departments. Each and every one refused assistance. The Civil Rights Commission stated they could only assist African-Americans.

REASONS FOR GRANTING THE WRIT

I.

Petitioner has been forced to suffer years of terror because of the greed of lawyers and corrupt judges. Patrick Henry was reported to have said: "Give me liberty or give me death." Petitioner is a patriot, having voluntarily served three years in the United States Army during the Korean Conflict. Petitioner deeply believes in the United States Constitution. Petitioner is a lawyer of almost 30 years experience and

is unable to believe the outrageous atrocities being perpetrated against him by dishonest lawyers and corrupt judges.

Petitioner filed a lawsuit for partition of real property in which he shared an undivided one-third interest, according to statute in Lapeer County, Michigan where the property is situate. Guarantee of due-process extends to property rights less substantial than full legal title, whether they come from a private contract or state law; even a merely arguable right of possession constitutes property. Federal Deposit Insurance Corp. v Morrison, 747 F.2d 610 (1984). The local judge arbitrarily dismissed the suit purportedly upon hearing that opposing counsel had illegally filed the identical suit in another county while this suit was pending contrary to law. Petitioner was instantly deprived of his Constitutional right to have access to courts and asserted his rights before the court in accordance with proper constitutional citations. The prohibitions of the 14th Amendment extend to all action of the State denying the equal protection of the law. Cooper v Aaron, 358 U. S. 1 (1958).

Meaningful access to courts is a right basic to the American system of government and is a fundamental right under the Constitution. Hadix v Johnson, 694 F Supp 259 (E.D.Mich.1988).

Claim Of Appeal was filed which action divests the lower court of jurisdiction. A stay order and bond on appeal were timely filed. Some two and one-half years later, the appellate court would enter its per curiam decision inventing a spurious defense for the unlawful and misconduct of the Lapeer circuit judge which violates the United States Constitution. The appellate court correctly found that Petitioner had, in fact, filed the correct statement showing that there was no case pending in the Lapeer court at the time of filing. However, the appellate court created the fiction that there was a suit pending in Oakland County. There was not, in fact. Thereafter the court held that the judge was justified in dismissing the case as a sanction. The opinion was particularly vicious wherein it stated that Petitioner had prior knowledge that Condit had filed pleadings in Oakland County. In fact, Condit filed his identical suit after first fraudulently filing pleadings in a former dismissed suit, which pleadings were returned to him by the court and while the suit was pending in Lapeer. It is the Oakland suit which is without jurisdiction and the one the Court Of Appeals should have dismissed as it was void by law, instead of making the false finding

that Condit had some sort of motion pending. There is no Michigan court rule similar to Fed. Rules Civ. Proc. Rule 11 or 37 with regard to dismissal as a sanction; however, federal law is very specific that dismissal is authorized only where failure to comply is due to wilfulness, bad faith or fault of a party. Petitioner is a completely innocent victim. Further, requirements of due process limit court's exercise of its inherent power to dismiss an action; thus dismissal is permissible sanction only when deception of court relates to matters in controversy and due to its harshness should be imposed only in extreme circumstances. Sanctions interfering with a litigant's claim or defenses violates due process when imposed merely for punishment... Wyle v R.J.Reynolds Industries, Inc. 709 F.2d 585 (1983).

Thereafter, and while the matter was on appeal to the Michigan Supreme Court and both stay of proceedings and bond on appeal were in full force and effect, the Lapeer judge entered fraudulent findings as regards funds held by the Receiver and entered exorbitant and false sanctions as regards your Petitioner and ordering him to pay Condit the sum of $10,374.58 as an alleged sanction and without any trial and while a motion for disqualification was pending. Federal law provides that a court's use of sanctions is limited by two standards. First, any sanction must be just; second the sanction must be related to the particular claim which was at issue. Sanctions interfering with a litigants claim violate due process when imposed merely for punishment. Wyle v R. J. Reynolds Industries, Inc. 709 F.2d 585 (1983).

A court's imposition of a monetary sanction against attorney for abuse of judicial process without affording attorney prior notice and opportunity to be heard violates due process. Eash v Riggins Trucking, Inc., 757 F. 2d 557 (1985).

Of equal importance is the fact that Judge Baguley refused to hear the motion for disqualification or to refer it to another judge for hearing. Federal law is again very specific, holding that if someone is deprived of his right to an impartial tribunal, he is denied his constitutional right to due process. The unfairness that results from biased decision makers strikes so deeply at our sense of justice that it differs qualitatively from the injury that results from insufficient procedures. In Justice Holmes' famous phrase, "even a dog distinguishes between being stumbled over and being kicked." O. Holmes, The Common Law

3 (1881), United Retail & Wholesale Employees Teamster Union Local No. 115 v Pension Plan v Yahn & McDonnell, Inc. 787 F2d 128 (1986).

II.

The second phase of this same matter is most painful to relate. While the matter was pending in Lapeer as was required by state statute, lawyer Condit with full knowledge; wilfully and with malice; caused an identical suit to be filed in Oakland County, Michigan. Although the matter was purportedly filed with Judge Andrews, it mysteriously wound up with Judge Mester, the judge who had previously dismissed the superintending control proceedings without cause. Petitioner immediately brought proper proceedings to dismiss the second action as is mandated for the reason that an action was already pending. The rule of law is that the second court (here Oakland county, Michigan) cannot acquire jurisdiction, even by consent. Among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. The action of state courts and of judicial officers in their official capacities, even though taken for the enforcement of private agreements, is state action within the provisions of the Fourteenth Amendment that no state shall deny to any person within its jurisdiction the equal protection of the laws. Richmond v J. A. Croson CO., 488 U. S. — (1988); NCAA v Tarkanian, 488 U. S. — (1988); Monroe v Pape, 365 U.S. 167,172 (1961); Cooper v Aaron, 358 U. S. 1 (1958).

Nevertheless, Oakland circuit judge Mester began a reign of terror with the denial of Petitioner's motion for summary disposition brought to dismiss secondary suit under MCR 2.116. The law states that the second suit is void, Fox v. Board of Regents of the University of Michigan, 375 Mich 238 (1965). Judge Mester additionally ignored the law that jurisdiction transfers to the Court Of Appeals upon filing of a claim of appeal and almost immediately commenced wrongfully to assess sanctions against Petitioner without a hearing nor cause and entered orders forcing Petitioner to pay lawyer Condit sums of money or be incarcerated for contempt.

Petitioner reasserts that such sanctions without notice and

hearing violate the due process requirements. Newton v A.C. & S., Inc. 918 F.2d 1127 (1990). This honorable Court has ruled that contempts are subject to jury trials under Article III, Sec. 2 of the Constitution and of the Sixth Amendment which is applicable to the states under the Fourteenth Amendment. Bloom v Illinois, 391 U.S. 194 (1968). Judge Mester not only entered one contempt order, but made a ruling on the merits without trial and ordered enforcement by finding contempt without notice.

Thereafter, Judge Mester appointed his real estate salesman friend to sell Petitioner's property and another friend to purportedly protect his real estate salesman friend from whatever civil action Petitioner might bring to protect his property in accordance with the Constitution. Petitioner also filed a motion to disqualify Judge Mester as it was clear that it was impossible to receive fundamental fair treatment or be tried by a judge free of bias. Due process guarantees notice and a meaningful opportunity to be heard by a neutral decision maker. Collins v Walden, 613 F. Supp. 1307 (D.C. Ga.1985) Due process clause requires judge to step aside when reasonable judge would find it necessary to do so. 28 U.S.C. Sec.455 contains the standard for determining whether disqualification is required under the statute: "Any judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." US v Couch, 896 F.2d 78 (5th Cir.1990).

State courts are bound equally with the federal courts by the federal Constitution and laws. Ultimate recourse must be had to this Court by certiorari if a state court has allegedly denied a federal right. Public Service Commission of Utah v Wycoff Co., 344 US 237 (1952).

The next atrocity arose by way of clearing title to properties in furtherance of the conspiracy to confiscate Petitioner's real property and convert the same to cash for division of the spoils among his friends. Petitioner had the foresight to file lis pendens in the original/ valid suit filed in Lapeer in accordance with statute. Judge Mester issued a bench warrant for Petitioner's arrest without any probable cause and gave instruction to the sheriff to harass Petitioner in a manner designed to embarrass, humiliate and oppress Petitioner and his family beyond any proper purpose. This oppression went on for weeks if not months. It culminated upon Petitioner appearing in court and being

seized, falsely arrested, manacled, chained and sentenced for a term beyond the judge's authority and cash bond in the amount of $50,000 dollars; all implemented so as to violate Petitioner's Fourth and Eighth Amendment rights. Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry whether these intrusions be called arrests or investigatory detention; such seizures subject unlimited numbers of innocent persons to the harassment and ignominy incident to involuntary detention. Davis v Mississippi, 394 US 1397 (1969). It may be noted that the state statute provides a fine limited to $250. and 30 days incarceration [subject to trial by an independent judge] (MCL 600.1715) whereas Judge Mester set bond at Fifty Thousand dollars cash and 60 days imprisonment. Can there be any doubt that imprisoning Petitioner because he refused to sign his real property over to the judge's friend without consideration is an extortion; constitutes cruel and unusual punishment because it is not only an arbitrary and disproportionate punishment, but constituted torture and barbarous punishment and that the amount of bail was excessive. The court may wish to treat it as a violation of equal protection, on the other hand, this may be one of the few cases exactly on point for total violation of the Eighth Amendment rights of a United States Citizen.

The Oakland County court without jurisdiction, next proceeded to "sell" Petitioner's real estate without notice to Petitioner. In fact, Petitioner was in Arizona visiting his children and grandchildren and had given notice to the county assignment clerk as regards his regularly scheduled absence from the state. This apparently triggered Judge Mester and his friends to sell Petitioner's real estate in Lapeer and in the state of Texas. The Lapeer property was valued at $10,000. dollars per acre, that being the sale price of three acres two years previously. Allegedly Judge Mester's real estate salesman friend sold the remaining 64 acres for a sum of $85,000 dollars which figures out to $1,300 per acre. Reportedly the judge's friends gave a portion to other friends and divided and pocketed the balance. The 640 acres Petitioner owned in Texas was reportedly sold for $100 dollars per acre. That too was divided amongst Judge Mester's friends. Without the guarantee of "due process", the right of private property cannot be said to exist, in the sense in which it is known to our laws. Whatever else may be uncertain about the definition of the term "due process" of law, all

authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedures and without notice or an opportunity for a hearing. Ochoa v Hernandez y Morales, 230 US 139 (1912).

III.

ARE THE LAWS OF MICHIGAN AS REGARDS JUDGES IN CONFLICT WITH THE UNITED STATES CONSTITUTION AND MUST THEY BE STRUCK DOWN ?

ARTICLE VI of the Constitution makes the Constitution the "Supreme Law of the Land". Marbury v Madison, 1 Cranch. 137, 177 (1803). No agency of the State nor officers or agents by whom its powers are exerted, shall deny to any person the equal protection of the laws. Ex Parte Virginia, 100 U.S. 339, 347 (1879); Cooper v Aaron, 358 U. S. 1 (1958).

The aggregate Michigan Constitution, 1963 and statutes with regard to judges are in direct conflict with the United States Constitution. Const. 1963, Art. 6, Sec. 4 grants the Michigan supreme court general superintending control over all courts, but withholds the power to remove a judge. Art. 6, Sec. 30 is in direct conflict, permitting removal upon recommendation of a 9 member commission comprised of 4 judges, one more judge and 2 lawyers and 2 non lawyer/judges. The people are disfranchised. Art. 2, Sec. 8 provides for recall of all elective officers EXCEPT JUDGES. Art. 6, Sec. 22 provides that judges may file an affidavit of candidacy in lieu of nominating petitions. Art. 6, Sec. 24 gives a judge a ballot designation. What has happened to the 14th Amendment provision: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States? What has become of the equal protection of the laws? These state laws create an aristocracy permitting judges to rule the people as tyrants and despots. Judges even create court rules and rule that they take the place of laws. Krajewski v Krajewski, 125 Mich App 407 (1983), Rev'd on other grounds, 420 Mich 729 (1984), MCR (1992) 7.201 (D). The court shall sit to hear cases in panels of three judges. MCR (1992) 7.201 (E) . . . the chief judge shall assign the judges to each panel.

This Honorable Supreme Court may take judicial notice that the Michigan Court Of Appeals is rife with judicial corruption, a Judge,

S. Jerome Bronson, being recently arrested and arraigned for bribery and then either committing suicide or being murdered. Chief Judge Danhof refused to divulge the other two members of the panel although MCR (1992) 7.201 (D) provides that a majority of the judges of a panel is the decision of the court. Plain logic suggests that one judge does not a decision make. And shortly thereafter, a Judge Maher retired rather than face a panel of the Judicial Tenure Commission. It was also reported by the media that said judge was arrested for shoplifting.

Without the exercise of the supervisory power of this Court, the people of Michigan will never achieve a justice system with a fundamental notion of fairness and fair play which should be afforded all citizens by their court system.

CONCLUSION

For these various reasons, this petition for certiorari should be granted. These matters presented should be remanded to proper courts for trials and determinations by fair minded judges and/or juries willing to follow the fundamental law.

Respectfully submitted,

WILLIAM ANDREW ORTMAN,

P18540

28010 South Harwich Drive
Farmington Hills, Mi 48334
(313)626-0078
Pro Se & Counsel of Record
for Petitioner

June 29, 1992

APPENDIX

No. 813

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

WILLIAM ANDREW ORTMAN, PETITIONER

v.

ORTMAN BROS.; CERTAIN LAWYERS, JUDGES

AND COURTS OF MICHIGAN

PETITION FOR A WRIT OF CERTIORARI

TO THE MICHIGAN COURT OF APPEALS

June 29, 1992

Order

Entered: January 31, 1992

92776 & (41)
92777 & (45)

Michigan Supreme Court
Lansing, Michigan

SC: 92776, 92777
COA: 118573, 131217
LC: 89-13967 89-367786

WILLIAM A. ORTMAN
Plaintiff-Appellant,

v

THE ORTMAN COMPANY, ORT-FAM, INC., JOHN R. ORTMAN AND JAMES F. ORTMAN,
Defendants-Appellees,

JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES F. ORTMAN, VIRGINIA A. ORTMAN AND THE ORTMAN COMPANY,
Plaintiffs-Appellees,

v

WILLIAM A. ORTMAN AND LAVINA M. ORTMAN,
Defendants-Appellants.

On order of the Court, the motion for immediate consideration and the delayed application for leave to appeal are considered. The motion for immediate consideration is GRANTED. The delayed application for leave to appeal is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

70128

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

January 31, 1992 Corbin R. Davis

Clerk

Order
Entered: March 30, 1990

Michigan Supreme Court
Lansing, Michigan

88348 & (24)

JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES F. ORTMAN, VIRGINIA A. ORTMAN AND THE ORTMAN COMPANY,
Plaintiffs-Appellees,

v

SC: 88348
COA: 118574
LC: 89-367786-CR

WILLIAM A. ORTMAN AND LAVINA M. ORTMAN,
Defendants-Appellants.

On order of the Court, the application for leave to appeal and the motion for immediate consideration and request for stay are considered. The motion for immediate consideration is GRANTED. The application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should now be reviewed by this Court. The request for stay is DENIED as moot.

60327

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

March 30, 1990 Jacqueline B. MacKinna
Deputy Clerk

Order
Entered: August 30, 1991

Michigan Supreme Court
Lansing, Michigan

90980 & (50)

KALAMAZOO METAL FINISHERS, INC.,

Plaintiff-Appellee,

SC: 90980
COA: 113968
LC: A-88-1777-CK
DC: 88-3402-LT-C

v

THE ORTMAN COMPANY,
Defendant,
and
WILLIAM A. ORTMAN,
Defendant-Appellant.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion to dismiss is also considered, and it is DENIED.

80827

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

August 30, 1991 Corbin R. Davis
Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT EOR THE COUNTY OF LAPEER.

WILLIAM A. ORTMAN,
Plaintiff
vs.

Case No: 89-013967-CR(B)
Hon. Norman A. Baguley

THE ORTMAN COMPANY, Michigan co-partnership; ORT-FAM, INC., a Michigan corporation; JOHN R. ORTMAN and JAMES F. ORTMAN, individually, jointly and severally,
Defendants

WILLIAM A. ORTMAN (P18540)
Attorney for Plaintiff
28010 S. Harwich Drive
Farmington Hills, MI 48018

CONDIT, MCGARRY, SCHLOFF and TRENTA, P.C.
RICHARD P. CONDIT (P12101)
Attorneys for Defendants, John R. Ortman, James F. Ortman, The Ortman Company and Ort-Fam, Inc.
6905 Telegraph Road, Suite 215
Birmingham, Michigan 48010
(313) 645-5205

ORDER OF DISMISSAL

At a session of said Court held in the Courthouse for the County of Lapeer, State of Michigan on the 7th day of April, 1989.

PRESENT: HONORABLE NORMAN A BAGULEY
CIRCUIT COURT JUDGE

This matter having come before the Court for hearing pursuant to the Court's Order of March 7, 1989 and upon Motions having been filed by Defendants and responded to by

Plaintiff and testimony having been taken and Briefs and oral arguments having been presented and the Court being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED that this cause is dismissed without prejudice.

IT IS FURTHER ORDERED that the Court's earlier Orders of February 21, 1989 with respect to the appointment of Receiver and Partition Commissioner as well as injunctive relief are set aside and held for naught.

IT IS FURTHER ORDERED that Evald H. Johnson of Troy, Michigan forthwith turn over to JAMES F. ORTMAN, Treasurer of ORT-FAM, INC., any and all assets, funds or monies now held or possessed by him in the name of ORT-FAM, INC.

IT IS FURTHER ORDERED that the matter of costs and attorney fees to be awarded to Defendants for having to defend this cause shall be deferred until further Order of the Court.

Martin E. Clements
for Circuit Court Judge Norman A. Baguley
April 19, 1989

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LAPEER

WILLIAM A. ORTMAN,
Plaintiff,

Case No. 89-013967-CR (B)
Hon. Norman A. Baguley,

P10336
-VS-
THE ORTMAN COMPANY, a (former) Michigan Co-partnership; ORT-FAM, Inc., an (alleged) Michigan Corporation; John R. Ortman and James F. Ortman, Individually, Jointly and Severally,
Defendants,

WILLIAM A. ORTMAN, P18540
Attorney for Plaintiff(s), In Pro Per
28010 South Harwich Drive
Farmington Hills, Mi 48018
(313) 626-0078

CONDIT, McGARRY, SCHLOFF and TRENTA, P.C.
RICHARD P. CONDIT, P12101
Attorneys for individual defendants
John R. and James F. Ortman
6905 Telegraph Road, Suite 215
Birmingham, Mi 48010
(313) 645-5205

ORDER DISMISSING MOTION FOR CONTEMPT AGAINST EVALD. H. JOHNSON, THE DULY APPOINTED RECEIVER HEREIN AND AGAINST JOSEPH P. GALASSO, SURETY ON BOND

At a session of said Court held at the Court House in the City of Lapeer on July 10, 1989

PRESENT: THE HONORABLE NORMAN A. BAGULEY
CIRCUIT JUDGE

This matter having come before the Court pursuant to a MOTION FOR CONTEMPT being filed and noticed for hearing by the attorney(s) for the two individual defendants, Richard P. Condit against Evald H. Johnson, the duly appointed Receiver and against Joseph P. Galasso, his Surety on his Bond and said Receiver having filed their ANSWER TO MOTION FOR CONTEMPT AND MOTION TO STRIKE THE SAME by and through William A. Ortman, the attorney for the Receiver duly appointed by this Honorable Court; and the parties having been represented in open Court by their respective attorneys, and the Court having heard the arguments of counsel; and being fully advised in the premises;

IT IS HEREBY ORDERED THAT the MOTION FOR CONTEMPT brought by the attorney(s) for the defendants is dismissed without prejudice for the reason that the ORDER OF DISMISSAL dated June 7th, 1989 and purportedly entered on April 19th, 1989 and signed by Judge Martin E. Clements is faulty and does not comport with the decision of this Court in the last three (3) paragraphs ORDER MODIFYING ORDER OF DISMISSAL.

NORMAN A. BAGULEY
CIRCUIT JUDGE
July 10, 1989

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LAPEER

WILLIAM A. ORTMAN,
Plaintiff
vs.

Case No: 89-13967-CR(B)
Hon. Norman A. Baguley

THE ORTMAN COMPANY, a Michigan co-partnership; ORT-FAM, INC., a Michigan Corporation; JOHN R. ORTMAN and JAMES F. ORTMAN, individually, jointly and severally,
Defendants

WILLIAM A. ORTMAN (P18540)
Attorney for Plaintiff
28010 S. Harwich Drive
Farmington Hills, Michigan 48018

CONDIT, MCGARRY, SCHLOFF and TRENTA, P.C.
RICHARD P. CONDIT (P12101)
Attorneys for Defendants, John R. Ortman, James F. Ortman, The Ortman Company and Ort-Fam, Inc.
6905 Telegraph Road, Suite 215
Birmingham, Michigan 48010
(313) 645-5205

Filed
County Clerk
Ju 10 9:50AM '89
Mary Ellen Thick
Lapeer County

ORDER STAYING PROCEEDINGS PENDING APPEAL

At a session of said Court held in the Courthouse for the County of Lapeer, State of Michigan on the 5th day of June, 1989.

PRESENT: HONORABLE NORMAN A. BAGULEY
CIRCUIT COURT JUDGE

This matter having come before the Court upon Plaintiff's Application for Entry of Order Staying Proceedings in Accordance with MCR 7.209 (E) (1); MCR 7.209 (I) or MCR 2.602 (B) and for Protection of the Receiver and Defendants having filed their objections thereto and the parties having appeared by their respective counsel and

arguments having been presented and the Court being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Court's April 7, 1989 Order of Dismissal and June, 1989 Order Modifying Order of Dismissal are stayed pending any timely future appeal pursuant to MCR 7.209 (E) (1).

IT IS FURTHER ORDERED that as a condition of this Stay Plaintiff shall file a $45,000 bond pursuant to the provisions of MCR 7.209 (E) (1) (a). Said bond shall be cash or a surety bond in a form approved by the Court.

IT IS FURTHER ORDERED that upon the return of approximately $30,000.00 from Evald H. Johnson to the treasurer for ORT-FAM, INC. as provided in the Court's Order Modifying Order of Dismissal, the amount of this bond shall be reduced to $15,000.

Norman A. Baguley
Circuit Court Judge

STATE OF MICHIGAN
40th JUDICIAL CIRCUIT
LAPEER COUNTY
255 CLAY ST., LAPEER, 48446
Court telephone no. (313) 667-0320

BOND ON APPEAL
CASE NO. 89-013967-CR (B)

Plaintiff name, William A. Ortman 28010 South Harwich Drive Farmington Hills, MI 48018 (313) 626-0010	Defendant name, John R. Ortman, ET. AL. 1455 Suncrest Drive Lapeer, MI 48446 (313) 664-2711
Plaintiff's attorney, bar no., William A. Ortman, J.D. P18540 28010 South Harwich Drive Farmington Hills, MI 48018 A/C 313-626-0078	Defendant's attorney, bar no., Richard P. Condit P12101 6905 Telegraph Rd. Suite 215 Birmingham, MI 48010 (313)645-5205

Amount of bond	Type of bond	Principal (appellant)
$45,000	Appeal/Surety	William A. Ortman

Type or print name(s), address(es), and telephone number(s) of suret(ies)

Thomas K. Butterfield
407 Clay Street
Lapeer, MI 48446
(313) 664-5921

Thomas G. Caley
3051 Lapeer Rd.
Lapeer, MI 48446
(313) 678-2261

The principal, and surety if applicable, is/are bound jointly and severally to the appellee or the court in the sum stated if the principal fails to perform any of the following obligations:

CIVIL ACTIONS

1. In a bond filed for stay pending appeal in a civil action, the

appellant promises:

a. to prosecute the appeal to a decision;
b. to perform or satisfy a judgment or order of the Court of Appeals or the Supreme Court;
c. to perform or satisfy the judgment or order appealed from if the appeal is dismissed;
d. In an action involving possession of land or judgment for foreclosure of a mortgage or land contract, to pay the appellee the damages which may result from the stay of proceedings; and
e. to do any other act which is expressly required in the statue authorizing appeal.

July 10, 1989

William A. Ortman
Principal Signature

Thomas K. Butterfield
Surety signature

Thomas G. Caley
Surety signature

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOHN R. ORTMAN, SHEILA D. ORTMAN,
JAMES F. ORTMAN AND VIRGINIA A. ORTMAN,
AND THE ORTMAN COMPANY

Plaintiffs
vs.
WILLIAM A. ORTMAN and
LAVINA M. ORTMAN,

Case No: 89-367786 CR
Hon. Fred M. Mester

Defendants

CONDIT, McGARRY, SCHLOFF & TRENTA, P.C.
RICHARD P. CONDIT (P12101)
6905 Telegraph Road, Suite 215
Birmingham, MI 48010
(313) 645-5205

ORTMAN AND ORTMAN
WILLIAM A ORTMAN (P18540)
Attorneys for Defendants
28010 S. Harwich Drive
Farmington Hills, MI 48018
(313) 626-0078

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'89 Jun 13 p1:45

ORDER DENYING MOTION FOR SUMMARY DISPOSITION
OR IN THE ALTERNATIVE FOR CHANGE OF VENUE

At a session of said Court held in the Court House for the City of Pontiac County of Oakland on June 12, 1989

PRESENT: HONORABLE Fred M. Mester

Circuit Court Judge

This matter having come before the Court upon Defendants Motion for Summary Disposition Under MCR 2.116 or in the Alternative for Change of Venue under MCR 2.223, Including Costs and Fees; for Sanctions and Plaintiffs having filed their Answer thereto,

and both parties having filed Briefs and a hearing having been held and the Court being fully advised in the premises;

NOW THEREFORE, IT IS HEREBY ORDERED that Defendants' Motion for Summary Disposition Under MCR 2.116 or in the Alternative for Change of Venue under MCR 2.223, Including Costs and Fees; for Sanctions is denied.

FRED M. MESTER
CIRCUIT COURT JUDGE

Docket # 118573

STATE OF MICHIGAN CLAIM OF APPEAL
COURT OF APPEALS
CIRCUIT COURT CASE NO. 89-013967-CR (B) and
89-367786-CR

Court Address:
COURT OF APPEALS, P.O. BOX 30022 LANSING, MI 48909

PLAINTIFF/APPELLANT
WILLIAM A. ORTMAN, P18540
28010 S. Harwich Dr.
Farmington Hills, MI 48018
(313) 626-0078

DEFENDANT(S)
THE ORTMAN COMPANY, A (former) Michigan Co Partnership; ORT/FAM, Inc. an (alleged) Michigan corporation; John R. Ortman and James F. Ortman, Individu ally, Jointly and Severally,

Plaintiff/Appellant Attorney
AS ABOVE: IN PRO PER

Defendant's Attorney
For Individual Def. (S)
Richard P. Condit, P12101
6905 Telegraph Rd., Ste 215
Birmingham, MI 48010
(313) 645-5205

WILLIAM A. ORTMAN, P18540, PLAINTIFF/APPELLANT, IN PROPER, claims an appeal from a final ORDER OF DISMISSAL dated April 7, 1989, but actually entered on April 19, 1989, along with any modification of such order) and an ORDER DENYING MOTION FOR REHEARING AND RECONSIDERATION entered without any proper notice on June 5th, 1989 in the Circuit Court for the County of Lapeer. The first order was signed by Judge Martin E. Clements for Judge Baguley and the second order was signed by Judge Norman A. Baguley.

BOND on appeal is not required by any statute, but is being left to the determination of the trial court.

APPLICATION FOR LEAVE TO APPEAL

Your claimant/appellant further seeks interlocutory leave to appeal

from an ORDER DENYING MOTION FOR SUMMARY DISPOSITION OR IN THE ALTERNATIVE FOR CHANGE OF VENUE in accordance with MCR 2.116 (J) (2) (a) entered June 13, 1989 in the Circuit Court for the County of Oakland by Judge Fred M. Mester in Case No. 89-367786 CR which cause involves the same parties and same subject matter as the pending Lapeer County case and was filed by Attorney Richard P. Condit, P12101 during such pendency nevertheless.

Your appellant believes these matters to be a single matter and that attorney Condit should be subject to immediate sanctions and that your Plaintiff be awarded his actual costs including attorney fees by this Honorable appellate court.

June 23, 1989

William A. Ortman, P18540
28010 South Harwich Drive
Farmington Hills, MI 48018
(313) 626-0078

PROOF OF SERVICE

I certify that I served a copy of this claim of appeal and application for leave to appeal and statement as to bond on the following parties on this day of June, 1989 by first class mail.

Richard P. Condit
John R. Ortman
James F. Ortman
Clerk, Circuit Court, Lapeer
Clerk, Circuit Court, Oakland

STATE OF MICHIGAN
COUNTY OF LAPEER

I, Theresa Spencer, Clerk of the Circuit Court for the County of Lapeer, the same being a Court of Record and having a seal, do hereby certify that I have compared the annexed copy of File #89-013967-CR (B), William Ortman -vs- The Ortman Co., Summons & Complaint with the original record thereof now remaining in my office, and that it is a true and correct transcript therefrom, and of the whole thereof. In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Lapeer, Michigan this 11th day of May 1992.

Theresa Spencer, Clerk

By Carol Mancarrow Deputy Clerk

STATE OF MICHIGAN
JUDICIAL DISTRICT
40th JUDICIAL CIRCUIT

SUMMONS AND COMPLAINT
CASE NO. 89-013967-CR (B)

Court Address
County Complex 255 Clay Street Lapeer, 48446
Court Telephone no.
313-667-0320
Norman A. Baguley (P10336)

Filed
County Clerk
Feb 3:16P '89
Mary Ellen Thick

Plaintiff	Defendant Name(s),
William A. Ortman 28010 South Harwich Drive Farmington Hills, MI 48018 (313) 626-0078 Plaintiff attorney, bar no., William A. Ortman, P18540 (In Pro Per) Same as above.	The Ortman Company (same as Plaintiff; Ort-Fam, Inc. 1700 Guardian Bldg. Detroit 48226 John R. Ortman 1951 Mayfield Rd. Lapeer; James F. Ortman, 7978 Junction Rd, Frankenmuth, 48734

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
2-16-89	8-17-89	Mary Ellen Thick

*This summons is invalid unless served on or before its expiration date.

☒X There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been

previously filed and dismissed or transferred after having been assigned to a judge.

❑ There is now on file in this court a civil action between these parties arising out of the same transaction or occurrence as alleged in the complaint. The action __is pending __was dismissed __was transferred. The case number assigned judge are:

VENUE

Plaintiff(s) residence
Oakland County

Defendant(s) residence
Lapeer, Oakland; Wayne; Saginaw

I declare that the complaint information above and attached is true to the best of my information knowledge and belief.

Date February 16, 1989

William A. Ortman, P18540
Signature of attorney/plaintiff

COMPLAINT IS STATED ON ATTACHED PAGES. EXHIBITS ARE ATTACHED IF REQUIRED BY COURT RULE.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LAPEER

WILLIAM A. ORTMAN,
Plaintiff,

v

Case No. 89-013967-CR(B)
Hon. Norman A. Baguley

THE ORTMAN COMPANY, a Michigan Co-Parnership; ORT-FAM, INC., a Michigan Corporation; JOHN R. ORTMAN and JAMES F. ORTMAN, Individually, jointly and severally,

Defendants.

WILLIAM A. ORTMAN (P18540)
Attorney for Plaintiff
28010 S. Harwich Drive
Farmington Hills, MI 48334
(313) 626-0078

Filed
County Clerk
Jan 13 9:00AM '92
Mary Ellen Thick

CONDIT, McGARRY AND SCHLOFF, P.C.
RICHARD P. CONDIT (P12101)
Attorneys for Defendants
6905 Telegraph Road, Suite 215
Bloomfield Hills, MI 48301
(313) 645-5205

ORDER FOR RETURN OF FUNDS SEIZED AND FOR COSTS AND ATTORNEY FEES

At a session of said Court held in the Court Building, City of Lapeer, County of Lapeer, State of Michigan on January 13, 1992

PRESENT: HONORABLE NORMAN A BAGULEY
Circuit Court Judge

THIS MATTER having come before the Court upon Defendants' Motion for Sanctions, Costs and Attorney Fees and Supplemental Motion for Sanctions, Costs, Attorney Fees for Return of Funds Seized and in the Alternative for Judgment Against Sureties, and

Plaintiff having filed his response thereto and the parties having appeared personally and by their respective counsel, and arguments having been presented and the Court being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that Evald H. Johnson forthwith comply with the Court's Order of July 10, 1989 which provides as follows:

> IT IS FURTHER ORDERED that the Court does now order that Evald H. Johnson of Troy, Michigan forthwith turn over to JAMES F. ORTMAN, Treasurer of ORT-FAM, INC., any and all assets, funds or monies now held or possessed by him in the name of ORT-FAM, INC., or THE ORTMAN COMPANY.

IT IS FURTHER ORDERED that WILLIAM A. ORTMAN shall forthwith pay to Defendants reasonable costs and attorney fees in the amount of Ten Thousand Three Hundred Seventy-Four and 58/100th ($10,374.58) Dollars having been unnecessarily incurred by Defendants as a result of Plaintiff's non-compliance with MCR 2.114 and MCR 2.113.

IT IS FURTHER ORDERED that Defendants' Motion for Judgment Against Sureties shall be held in abeyance until further order of the Court.

Norman A. Baguley
Circuit Court Judge

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LAPEER

Case No. 89-013967-CR(B)
Hon. Norman A. Baguley

WILLIAM A. ORTMAN,
Plaintiff,
v.

THE ORTMAN COMPANY, a Michigan Co-Partnership; ORT-FAM, INC., a Michigan Corporation; JOHN R. ORTMAN and JAMES F. ORTMAN, individually, jointly and severally,

Defendants.

WILLIAM A. ORTMAN (P18540)
Attorney for Plaintiff
28010 S. Harwich Drive
Farmington Hills, MI 48334
(313)626-0078

CONDIT, McGARRY and SCHLOFF, P.C.
RICHARD P. CONDIT (P12101)
Attorneys for Defendants
6905 Telegraph Road, Suite 215
Bloomfield Hills, MI 48301
(313)645-5205

ORDER RE: WILLIAM A. ORTMAN

At a session of said Court held in the Court Building, City of Lapeer, County of Lapeer and State of Michigan on May 20, 1992.

PRESENT: HONORABLE NORMAN A. BAGULEY
Circuit Court Judge

This matter having come before the Court upon Defendants' Motion for Contempt against William A. Ortman and the Court having issued its Order to Show Cause on April 24, 1992 and William A.

Ortman having appeared personally on May 11, 1992 and it appearing that William A. Ortman has not complied with the Court's Order of January 13, 1992 with respect to the payment of Defendants' reasonable costs and attorney fees and the Court being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that William A. Ortman shall on or before May 26, 1992 pay to Defendants' attorney, RICHARD P. CONDIT, the sum of Ten Thousand Three Hundred Seventy Four and 58/100ths ($10,374.58) Dollars as Defendants' reasonable costs and attorney fees.

It is FURTHER ORDERED that upon failure to comply with this Order, William A. Ortman shall be in contempt of this Court.

NORMAN A. BAGULEY

Circuit Court Judge

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF LAPEER

WILLIAM A. ORTMAN,
Plaintiff,
v.
THE ORTMAN COMPANY, a Michigan Co-Partnership; ORT-FAM, INC., a Michigan Corporation; JOHN R. ORTMAN and JAMES F. ORTMAN, Individually, jointly and severally,

Defendants.

Case No. 89-013967-CR(B)
Hon. Norman A. Baguley

WILLIAM A. ORTMAN (P18540)
Attorney for Plaintiff
28010 S. Harwich Drive
Farmington Hills, MI 48334
(313) 626-0078

CONDIT, McGARRY AND SCHLOFF, P.C.
RICHARD P. CONDIT (P12101)
Attorneys for Defendants
6905 Telegraph Road, Suite 215
Bloomfield Hills, MI 48301
(313) 645-5205

ORDER RE: EVALD H. JOHNSON

At a session of said Court held in the Court building, City of Lapeer, County of Lapeer and State of Michigan on May 20, 1992.

PRESENT: HONORABLE NORMAN A BAGULEY
Circuit Court Judge

This matter having come before the Court upon Defendants' Motion for Contempt against Evald H. Johnson for failure to comply with the Court's Order of June 5, 1989 and the Court having issued an Order to Show Cause on April 23, 1992 and Evald H. Johnson having appeared personally and by his attorney on May 11, 1992 and the Court being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that Evald H. Johnson shall on or before May 26, 1992 turn over to the Lapeer County Clerk any and all assets, funds or monies now held or possessed by him in the name of Ort-Fam, Inc., or The Ortman Company together with an accounting of all such funds received and/or disbursed.

IT IS FURTHER ORDERED that upon compliance with this Order, Evald H. Johnson shall be found not to be in contempt of Court.

IT IS FURTHER ORDERED that the County Clerk shall retain said funds in an interest-bearing account to be disbursed to the appropriate parties upon further order of the Court.

NORMAN A. BAGULEY
Circuit Court Judge

STATE OF MICHIGAN COURT OF APPEALS

WILLIAM A. ORTMAN, June 25, 1991

Plaintiff-Appellant,

v No. 118573

THE ORTMAN COMPANY, ORT-FAM, INC., JOHN R. ORTMAN and JAMES F. ORTMAN,

Defendants-Appellees.

JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES F. ORTMAN, VIRGINIA A. ORTMAN and THE ORTMAN COMPANY,

Plaintiffs-Appellees,

v No. 131217

WILLIAM A. ORTMAN and LAVINA M. ORTMAN,

Defendants-Appellants.

Before: Danhof, C.J., and Holbrook, Jr. and Sullivan, JJ.

PER CURIAM.

These two consolidated cases represent more or less the same underlying controversy, the partition of property and the dissolution of two family business entities. In No. 118573, appellant William Ortman appeals from an order of the Lapeer Circuit Court dismissing his action for noncompliance with court rules and the apparent pendency of action in Oakland Circuit Court. In No. 131217, appellant Ortman appeals from an order of the Oakland Circuit Court taxing costs in the amount of $3,586.70. We affirm the orders of the respective courts.

The litigation concerns properties owned by appellant and his two brothers. The properties are managed by a partnership, Ortman Company, and a corporation, Ort-Fam, Inc., both of which entities are in the hands of the three Ortman brothers. Appellant originally filed suit against his brothers and the two business entities in Oakland

Circuit Court, alleging in 160 consecutively numbered paragraphs that his brothers were fraudulently and wastefully handling the various assets involved to his detriment. A temporary restraining order was issued and appellant order to post a $265,000 bond. At a January 4, 1989, hearing, Oakland Circuit Judge Steven Andrews denied appellant's motions for default judgment, appointment of a receiver and appointment of a partition commissioner. Appellant moved to disqualify Judge Andrews and upon his refusal to do so, and the chief judge's concurrence, appellant voluntarily dismissed the action on February 10, 1989.

Five days later, appellant filed an identical action in Lapeer Circuit Court. "Lapeer County" was substituted for "Oakland County" throughout the complaint except in paragraph 111. On the day of filing, Lapeer Circuit Judge Norman Baguley, granted appellant ex parte the appointment of a receiver for the business entities and a restraining order against his brothers and the business entities.

At a show cause hearing, the defendants filed an appearance and represented to Judge Baguley that there was an identical action pending in Oakland Circuit Court since their motion to set aside default judgments was still awaiting a decision. The proceedings were stayed until April 7, 1989, at which time Judge Baguley, angered over appellant's "judge shopping", dismissed the case, telling appellant he would have to reactivate his Oakland Circuit case.

In the meantime, on April 11, 1989, appellant's brothers, their wives, and Ortman Company filed suit against appellant in Oakland Circuit Court, seeking partition. Oakland Circuit Judge Fred Mester denied appellant's motion for summary disposition or change of venue. Appellant filed a delayed application for leave to appeal the dismissal to this Court (No. 118574), asserting Oakland Circuit Court could not exercise jurisdiction because of the pending Lapeer County action. This Court denied appellant's application for leave to appeal and sua sponte awarded the appellees actual costs, including reasonable attorney fees, pursuant to MCR 7.216(C)(1)(b). The circuit court taxed costs in the amount of $3,586.70 and appellant sought leave to appeal to the Supreme Court, which was denied. Appellant now appeals the taxing of costs to this Court.

No. 118573

Restating appellant's two issues as one, appellant asks whether

the trial judge properly dismissed, without prejudice, his Lapeer Circuit Court action in view of the previous Oakland County litigation and the then state of the pleadings, the litigants and the subject matter involved.

We review the dismissal of an action for failure to comply with the court rules for an abuse of the trial court's discretion. Houston v Southwest Detroit Hospital, 166 Mich App 623, 628-629; 420 NW2d 835 (1987), lv den 431 Mich 852 (1988).

MCR 2.113(C)(2)(a) requires a disclosure by a plaintiff as follows:

(2) The caption of a complaint must also contain either (a) or (b) as a statement of the attorney for the plaintiff, or of a plaintiff appearing without an attorney:

(a) There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

Contrary to appellant's assertion that he told Judge Baguley about the Oakland County action when he requested the appointment of a receiver and restraining order, the record is clear that Judge Baguley was first meaningfully apprised of the other case when the defendants informed him about it at the first hearing.

At the second hearing, Judge Baguley focused on appellant's violation of MCR 2.113(C)(2) and what he termed an attempt at "judge shopping" and appellant's noncompliance with MCR 2.114, the so-called signature rule. Judge Baguley thereupon dismissed the action in what appellant now asserts was an abuse of discretion.

While MCR 2.114(E) does not specify dismissal of an action as a sanction for noncompliance with the signature requirement, neither does it disallow dismissal as a sanction. MCR 2.504(B), the involuntary dismissal rule, acknowledges the power of the trial court to enter a dismissal both in situations in which it is specifically authorized by another rule and in situations, as with MCR 2.114, in which the rule does not specify the sanction.

The facts of the instant case clearly warranted dismissal as a

sanction. Appellant is an attorney, representing himself, and Judge Baguley could well consider him to be aware of the court rules and of the judiciary's intense dislike for judge and/or form shopping. Seeking ex parte relief from the Lapeer Circuit Court without informing Judge Baguley of the Oakland Circuit action, going so far as to submit a pleading stating there was no other action pending, was an affront to the court, an affront knowingly caused by an officer of the court.

Appellant's claim of violations of due process and equal protections of the laws are meritless. Appellant had the option of reactivating his Oakland Circuit Court action but chose to "judge shop" instead. Having suffered the sanction of dismissal as a result of his effrontery, he cannot be heard to now claim a deprivation of his rights. We find no abuse of discretion and affirm the lower court.

No. 131217

Appellant also challenges this Court's award of actual costs, including reasonable attorney fees, pursuant to MCR 7.216(C)(1)(b) and the amount of those costs as taxed by the trial court.

Under MCR 7.216, this Court can sua sponte assess actual or punitive damages when it determines that an appeal or any of the proceedings in an appeal were vexatious because there was a lack of any reasonable basis for the belief the issue or issues were meritorious. Appellant's underlying appeal (No. 118574) was dismissed by this Court for failure to comply with the court rules and was found to be vexatious.

Appellant's brief in the instant appeal contains the same type of groundless, unfounded and scandalous allegations his earlier briefs contained and constitutes an utter and complete disregard of the requirements that an issue be fairly presented to this Court. His assertion that Judge Mester was without authority to tax costs is utterly preposterous as the imposition of those costs was done in direct response to an order of this Court. Appellant must be put on notice that his lack of disregard for the court rules has consequences, chief of which is his being required to pay the costs for parties subjected to defending themselves against his meritless and vexatious proceedings. We affirm the taxation of costs.

Affirmed

/s/ Robert J. Danhof
/s/ Donald E. Holbrook, Jr.
/s/ Joseph Be. Sullivan

Court of Appeals, State of Michigan

ORDER

John R. Ortman v William A. Ortman		Robert J. Danhof, C.J. Presiding Judge
Docket #	131217 & 118573	Donald E. Holbrook, Jr.
L.C.#	89-367786 CR	Joseph B. Sullivan Judges

The Court orders that the motions for rehearing and to disqualify panel are DENIED.

A true copy entered and certified by Daniel F. Walsh, Chief Clerk, on

Oct. 01, 1991	Daniel F. Walsh
Date	Chief Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES F. ORTMAN AND VIRGINIA A. ORTMAN, AND THE ORTMAN COMPANY
Plaintiffs,

vs.

Case No. 89-367786 CR
HON. FRED M. MESTER

WILLIAM A. ORTMAN AND LAVINA M. ORTMAN,
Defendants.

CONDIT, McGARRY and SCHLOFF, P.C.
RICHARD P. CONDIT (P12101)
Attorneys for Plaintiffs
6905 Telegraph Road, Suite 215
Bloomfield Hills, Michigan 48301
(313) 645-5205

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Deputy County Clerk

ORTMAN AND ORTMAN
WILLIAM A. ORTMAN (P18540)
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Farmington Hills, Michigan 48334
(313) 626-0078

HARNISCH & ASSOCIATES, P.C.
ALAN C. HARNISCH (P14654)
Attorneys for James L. Whyard
30600 Telegraph Road, Suite 2152
Bingham Farms, Michigan 48025-4530
(313) 647-8088

ORDER AUTHORIZING DISTRIBUTION
OF RANCHWOOD SALE PROCEEDS, INCLUDING
PAYMENT OF FEES

At a session of said Court, held in the Courthouse Tower, Pontiac, MI on Dec. 16, 1991

PRESENT: HON. FRED M. MESTER
CIRCUIT COURT JUDGE

This matter having come before the Court on motion of JAMES L. WHYARD, a hearing having been conducted in open court and the Court being duly advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Oakland County Clerk is hereby authorized and directed to pay to JAMES L. WHYARD the amount of $18,825.00 for his services rendered and charges incurred through October 29, 1991. $15,000.00 to be taken from the proceeds of the Ranchwood property sale on December 21 1991 currently being held by the Oakland County Clerk and the balance, plus authorized fees and expenses after Oct. 29, 1991, shall be taken from the proceeds of the Texas property sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Oakland County Clerk is hereby authorized and directed to pay to ALAN C. HARNISCH the amount of $18,892.74 for his services rendered and charges incurred through September 30, 1991. $15,000 to be taken from the proceeds of the Ranchwood property sale on currently being held by the Oakland County Clerk and the balance plus authorized fees and expenses after Sept. 30, 1991 shall be taken from the proceeds of the Texas property sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Oakland County Clerk is hereby authorized and directed to pay the balance of $35,078.76, plus interest since Nov. 25, 1991, to THE ORTMAN COMPANY, such amount to be taken from the proceeds of the Ranchwood property sale, currently being held by the Oakland County Clerk.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that THE ORTMAN COMPANY is authorized to attribute $11,663.31 of the fees of JAMES L. WHYARD and ALAN C. HARNISCH to the sole interest of WILLIAM A. ORTMAN in THE ORTMAN COMPANY.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that THE ORTMAN COMPANY is authorized to attribute the $9,500.00 of the proceeds of the sale of the Ranchwood property necessary to discharge the lien of Oakley Hardwoods, Inc. to the sole interest of WILLIAM A. ORTMAN in THE ORTMAN COMPANY.

FRED M. MESTER
CIRCUIT COURT JUDGE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES F. ORTMAN and VIRGINIA A. ORTMAN, and THE ORTMAN COMPANY
Plaintiffs,

vs.

Case No. 89-367786 CR
HON. FRED M. MESTER

WILLIAM A. ORTMAN and LAVINA M. ORTMAN,
Defendants.

CONDIT, McGARRY and SCHLOFF, P.C.
RICHARD P. CONDIT (P12101)
Attorneys for Plaintiffs
6905 Telegraph Road, Suite 215
Bloomfield Hills, Michigan 48301
(313) 645-5205

ORTMAN AND ORTMAN
WILLIAM A. ORTMAN (P18540)
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28010 South Harwich Drive
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(313) 626-0078

HARNISCH & ASSOCIATES, P.C.
ALAN C. HARNISCH (P14654)
Attorneys for James L. Whyard
30600 Telegraph Road, Suite 2152
Bingham Farms, Michigan 48025-4530
(313) 647-8088

ORDER AUTHORIZING DISTRIBUTION OF REAGAN COUNTY, TEXAS SALE PROCEEDS, INCLUDING PAYMENT OF FEES

At a session of said Court, held in the
Courthouse Tower, Pontiac, MI
on Mar. 19, 1992
PRESENT: HON. FRED M. MESTER
CIRCUIT COURT JUDGE

This matter having come before the Court on motion of JAMES L. WHYARD, a hearing having been conducted in open court and the Court being duly advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Oakland County Clerk is hereby authorized and directed to forthwith pay to JAMES L. WHYARD the amount of $8,062.50 for his services rendered and charges incurred through March 18, 1992, such amount to be taken from the proceeds of the Reagan County, Texas property sale, currently being held by the Oakland County Clerk.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Oakland County Clerk is hereby authorized and directed to forthwith pay to ALAN C. HARNISCH the amount of $11,446.45 for his services rendered and charges incurred through March 18, 1992, such amount to be taken from the proceeds of the Reagan County, Texas property sale, currently being held by the Oakland County Clerk.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Oakland County Clerk is hereby authorized and directed to forthwith pay the balance of $42,191.82, plus interest, to THE ORTMAN COMPANY, such amount to be taken from the proceeds of the Reagan County, Texas property sale, currently being held by the Oakland County Clerk.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that THE ORTMAN COMPANY is authorized to attribute $1,800.00 of the fees of ALAN C. HARNISCH and JAMES WHYARD to the sole interest of WILLIAM A. ORTMAN in THE ORTMAN COMPANY.

FRED M. MESTER
CIRCUIT COURT JUDGE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES F. ORTMAN and VIRGINIA A. ORTMAN, and THE ORTMAN COMPANY,
Plaintiffs,

vs.

Case No. 89-367786 CR
HON. FRED M. MESTER

WILLIAM A. ORTMAN and LAVINA M. ORTMAN,
Defendants.

CONDIT, McGARRY and SCHLOFF, P.C.
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'91 Aug 14 P5:00

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ALAN C. HARNISCH (P14654)
Attorneys for James L. Whyard
30600 Telegraph Road, Suite 2152
Bingham Farms, Michigan 48025-4530
(313) 647-8088

EX-PARTE ORDER SHORTENING NOTICE OF HEARING AND SCHEDULING MOTION HEARING DATE

At a session of said Court, held in
the Courthouse Tower, Pontiac, MI on
Aug. 14, 1991
PRESENT: HON. FRED M. MESTER
CIRCUIT COURT JUDGE

This matter having come before the Court on the ex-parte Motion of JAMES L. WHYARD to Shorten Hearing Time on Motion, this Court finding good cause to shorten the notice of hearing, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the notice of hearing in this matter is hereby shortened to two days.

IT IS FURTHER ORDERED that the hearing on JAMES L. WHYARD'S motion for Authorization To Amend Purchase Agreement And to Close On Ranchwood Property on August 23, 1991 be and hereby is scheduled for Friday, August 16, 1991 at 1:30 p.m. in the courtroom of the Honorable Fred M. Mester at 1200 North Telegraph Road, Pontiac, Michigan 48341.

FRED M. MESTER
CIRCUIT COURT JUDGE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES F. ORTMAN, VIRGINIA A. ORTMAN and THE ORTMAN COMPANY
Plaintiffs,

v.

Case No. 89-367786-CR
Hon. Fred M. Mester

WILLIAM A. ORTMAN and LAVINA M. ORTMAN,
Defendants.

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JUDGMENT ON ACCOUNTING

At a session of said Court held in the Courthouse, City of Pontiac, County of Oakland, State of Michigan on Apr. 29, 1992.

PRESENT: HONORABLE FRED M. MESTER
Circuit Court Judge

This matter having come before the Court for trial of the accounting issues between the parties pursuant to the Court's July

27, 1990 Order For Sale Of Real Estate, Dissolution of Partnership And For Accountings and the Plaintiffs having appeared personally and by their counsel, and Defendants having failed to appear and the trial having been conducted and testimony having been presented and exhibits having been received, the Court, having been fully advised in the premises, made its findings of facts including the following:

1. The annual financial statements and tax returns of The Ortman Company partnership for the years 1985 through and including 1991 appear to be a true and accurate accounting of the company's financial transactions during that period. (Exhibits 12-13)

2. The necessary dissolution of The Ort-Fam Company as ordered by the Court on July 27, 1990 is being accomplished in an orderly fashion and the sales of the Reagan County, Texas and Ranchwood properties have been finalized and the proceeds disbursed to The Ortman Company pursuant to Court Orders.

3. The necessary sale of the Ortman family real estate may now proceed since the condemnation proceedings involving part of the Home farm and Poole farm have recently been concluded.

4. Defendant, Willliam A. Ortman, has converted the sum of Seven Thousand Nine Hundred Ninety-six ($7,996.00) Dollars as of December 31, 1988 by virtue of having retained rentals received from Michael and Kay Sutherland on real estate and/or buildings located on the Ortman family farm in Lapeer County, Michigan. The amount of additional conversion, if any, from December 31, 1988 to date cannot be ascertained, nor can claimed expenses of William A. Ortman be verified without a detailed accounting from William A. Ortman as earlier ordered by the Court on October 20, 1989.

5. Allegations in William A. Ortman's Counter-Claim against Plaintiffs, John R. Ortman and James F. Ortman, alleging Ortman Company irregularities, unpaid loans, misappropriations, unpaid rentals and claimed educational funds are unfounded and without merit.

6. The matter of Plaintiffs' claim for the assessment of costs and attorney fees against Defendants cannot be resolved until the dissolution and sales proceedings have been substantially accomplished.

NOW, THEREFORE, IT IS HEREBY ORDERED that Judgment in favor of Plaintiffs and against Defendants is entered allowing the financial statements and tax returns of The Ortman

Company from 1985 through and including 1991 as a true, accurate and complete accounting of the partnership affairs.

IT IS FURTHER ORDERED that the interest of William A. Ortman in the Ortman family real estate is surcharged the sum of Seven Thousand Nine Hundred Ninety-Six ($7,996.00) Dollars through December 31, 1988 representing rental funds converted to his own use.

IT IS FURTHER ORDERED that William A. Ortman shall forthwith comply with the Court's Accounting Order of October 20, 1989 and provide full and complete financial information regarding the Sutherland rentals received subsequent to the date of that Order.

IT IS FURTHER ORDERED that Counter-Plaintiffs, William A. Ortman and Lavina M. Ortman, shall take nothing on the charges and relief sought in their Counter-Claim.

IT IS FURTHER ORDERED that the matter of Plaintiff's claimed attorney fees and costs shall be reserved until the dissolution and sales proceedings are substantially completed.

IT IS FURTHER ORDERED that this Court will maintain continuing jurisdiction of this cause for the granting of such further relief as may be necessary and equitable in the premises.

FRED M. MESTER
Circuit Court Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF
KALAMAZOO

KALAMAZOO METAL FINISHERS, INC.,
Michigan Corporation,
Plaintiff,

Hon. William G. Schma
File No. A 88-1777 CK

v.

The Ortman Company, an (alleged)
Michigan Co-partnership,
Defendant,

STIPULATION FOR ADJOURNMENT

It is stipulated and agreed by and between the parties, by their respective attorneys, that the above entitled cause shall be continued and adjourned as regards a certain motion for summary disposition, et.al. and that no written brief need be filed in support thereof. The Assignment Clerk has been notified and has re-scheduled the hearing on this matter for December 9, 1988 in the event the Circuit Judge does not hear this matter at the pre-trial on December 6, 1988.

Dated: October, 1988.
Craig H. Lubben, P33154

James E. Spurr
William A. Ortman, P18540

ORDER OF ADJOURNMENT

At a session of said Court held in the Circuit Courthouse in the City and County of Kalamazoo on this 14th day of November, 1988.

THE HONORABLE WILLIAM G. SCHMA, PRESIDING

This matter having come on to be heard upon the stipulation of the parties by and between their attorneys and the Court being fully advised in the premises;

IT IS ORDERED that the hearing for summary disposition, et. al. scheduled for hearing on October 7, 1988 is adjourned until December 9, 1988 or at such date as the court may decide to hear such motion.

IT IS FURTHER ORDERED that there is no necessity for the filing of a brief in support of said motion for the reason that the attorneys have stipulated that none is required and that there is a sufficient memorandum of law contained in said motion.

WILLIAM G. SCHMA
Circuit Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

KALAMAZOO METAL FINISHERS, INC.,
a Michigan corporation,
Plaintiff,

vs.

Hon. William G. Schma
File No. A 88-1777 CK

THE ORTMAN COMPANY, a
Michigan co-partnership,
Defendant.

James E. Spurr (P33049)
Attorney for Plaintiff
444 West Michigan Avenue
Kalamazoo, Michigan 49007
(616) 381-7030

Craig H. Lubben (P33154)
Attorney for Defendant
425 West Michigan Avenue
Kalamazoo, Michigan 49007
(616) 343-0282

ORDER FOR SUMMARY DISPOSITION AWARDING SPECIFIC PERFORMANCE AND CONVEYANCE OF REAL PROPERTY

At a session of said Court held in the City of Kalamazoo, County of Kalamazoo, State of Michigan this 2 day of Dec., 1988.
PRESENT: The Honorable William G. Schma, Circuit Court Judge

This Court having reviewed the Motion for Summary Disposition filed by the Plaintiff, and reviewed the Briefs submitted on behalf of the Plaintiff and the Defendant, and having heard oral argument on the matter, the Court notes, as undisputed material facts, the following:

1. The Ortman Company is an existing Michigan co-partnership.
2. The Ortman Company consists of three brothers, James Ortman, John Ortman, and William Ortman.
3. The Ortman Company took title to the premises described in paragraph 5 below in 1956, and record title is presently held by The Ortman Company.
4. The Lease and Option to Purchase, attached to Plaintiff's Complaint as Exhibit 1, is a valid agreement and is binding upon The

Ortman Company, and the option to purchase contained therein has been exercised by Plaintiff.

5. The premises currently owned by the Ortman Company and which are the subject of this Agreement are located in the City of Kalamazoo, Michigan and is described as follows:

> Commencing at the intersection of the Easterly line of Glendening Road with the Southerly line of the Grand Trunk Western Railroad right-of-way as described in a deed recorded in Liber 408 of deeds, Page 519, in the Office of the Register of Deeds for Kalamazoo County, Michigan, and thence South along the East line of said Glendening Road to a point 550 feet South of said place of beginning as measured along the East line of Glendening Road, thence East at right angles to the East line of Glendening Raod to the Westerly line of another right-of-way of the Grand Trunk Western Railroad, thence Northerly along the Westerly line of said latter-mentioned right-of-way of said Grand Trunk Railroad to the Southerly line of the Grand Trunk Western Railroad right-of-way first aforementioned and recorded in Liber 408 of deeds, Page 519, as afore-said, thence Westerly along the southerly line of said first-mentioned right-of-way to the place of beginning.

Based upon the above undisputed material facts presented to this Court, the applicable law affords the Plaintiff summary disposition.

IT IS HEREBY ORDERED AND ADJUDGED that the Ortman Company, a Michigan co-partnership, convey to Kalamazoo Metal Finishers, Inc., forthwith the premises described above in the manner and for the price set forth in the Lease and Option to Purchase.

IT IS FURTHER ORDERED AND ADJUDGED that all three partners, above named, execute the necessary documents to convey good and marketable title to the premises on behalf of The Ortman Company, and if any partner fails or refuses to execute such documents, the entry and recording of this Order for Summary Disposition shall constitute the execution as a partner of that partner who fails or refuses to sign.

This Order for Summary Disposition enters with prejudice upon the merits, and without cost to any party.

WILLIAM G. SCHMA
Circuit Court Judge

APPROVED AS TO FORM:

James E. Spurr, Attorney for Plaintiff
Craig H. Lubben, Attorney for Defendant

STATE OF MICHIGAN
COURT OF APPEALS

KALAMAZOO METAL FINISHERS, INC.,
Plaintiff-Appellee,

v

January 31, 1991
No. 113968

THE ORTMAN COMPANY,
Defendant,

and

WILLIAM A. ORTMAN,
Appellant.

Before: Maher, P.J., and Sawyer and Brennan, JJ.

PER CURIAM.

William A. Ortman appeals the December 2, 1988, order granting plaintiff Kalamazoo Metal Finishers, Inc.'s motion for summary disposition pursuant to MCR 2.116(C)(10). The order awarded plaintiff specific performance and conveyance of property owned by defendant Ortman Company, a Michigan co-partnership of which William Ortman was apparently a partner. The order was entered with the consent of The Ortman Company. We affirm.

On appeal, William Ortman argues that the lower court's order granting summary disposition should be reversed. However, we find that the issue is not properly before the Court. Pursuant to MCR 7.203(A)(1), the Court of Appeals has jurisdiction of an appeal of right filed by "an aggrieved party" from a final judgment or final order of the circuit court. (emphasis added.) The trial court found defendant had no standing to respond to plaintiff's motion for summary disposition as The Ortman Company, and not William Ortman was named as a party. William Ortman does not raise this issue on appeal. Therefore, we will not address the issue and find that William Ortman has no standing to appeal.

Affirmed.

/s/ Richard M. Maher
/s/ David H. Sawer
/s/ Thomas J. Brennan

STATE OF MICHIGAN
COURT OF APPEALS

IN THE MATTER OF THE ESTATE OF
MARCELLA ORTMAN, deceased

November 7, 1991
No. 122843

WILLIAM A. ORTMAN,
Petitioner-Appellant,

v

JOHN R. ORTMAN and JAMES F. ORTMAN,
Respondents-Appellees.

Before: Griffin, P.J., and Doctoroff and Brennan, JJ.

PER CURIAM.

Petitioner, William Ortman, appeals as of right from a probate court order granting respondents' motion for authority to pay certain attorney fees out of the estate of Marcella G. Ortman, deceased. Petitioner further appeals from a separate order denying his motion to have respondents removed as fiduciaries for the estate. We affirm.

Following the death of Marcella Ortman on August 11, 1984, her three sons, petitioner William Ortman and respondents John and James Ortman, were appointed copersonal representatives of their mother's estate. during the course of administration, William filed with the probate court a "petition for supervision of decedent's estate." In this petition, William sought inter alia, to have respondents removed as cofiduciaries as a result of alleged breach of fiduciary duty.

On February 26, 1986, the probate court entered an order for supervised probate. The petition for removal of respondents was held in abeyance. Thereafter, the probate court issued two orders allowing the first and second accounts for Ortman's estate. In addition, petitioner's complaint for superintending control was dismissed in Oakland Circuit Court.

Petitioner appealed the above rulings to this Court. Respondents retained private counsel to defend the appeal. On July 28, 1989, this Court issued an unpublished per curiam opinion affirming the orders of the probate and circuit courts, respectively. On the issue of respondents' removal as fiduciaries, this Court held:

Petitioner next claims the probate court erred by failing to remove respondents as personal representatives of the estate. By order dated February 26,, 1986, the probate court held petitioner's request for removal of respondents as personal representatives in abeyance. However, petitioner has not taken an appeal from that order. This Court has no subject matter jurisdiction over issues unrelated to the order from which the party appeals. Ulery v Coy, 153 Mich App 551, 555-556; 396 NW2d 480 (1987).

Subsequently, respondents filed a motion with the probate court requesting that the attorney fees they incurred in defending petitioner's appeal be paid by the estate. Following a hearing, the court ruled in respondents' favor and awarded them $7,181.97 in attorney fees and costs to be paid out of the estate. In a separate order, the probate court denied petitioner's motion to have his brothers removed as fiduciaries.

On appeal, petitioner contends that the probate court erred when it ruled that respondents were entitled to have their attorney fees paid by the estate. We disagree.

To be chargeable against the estate, the attorney fees sought must be for services rendered on behalf of and benefitting the estate. In re Pritchard Estate, 164 Mich App 82, 86; 416 NW2d 331 (1987). Here, petitioner claims that because respondents' attorney represented them in their individual capacities as cofiduciaries in defending the prior appeal, the attorney's services cannot be said to have been rendered on behalf of the estate. This argument has no merit. In re Valentino Estate, 128 Mich App 87, 95-96; 338 NW2d 698 (1983, this Court held:

> Because the orderly administration of an estate requires that fiduciaries not be changed unnecessarily, we hold that attorney's fees for defending the fiduciary may be chargeable to the estate. However, the Baldwin Estate, 311 Mich 288; 18 NW2d 827 (1945) and Davis Estate, 312 Mich 258; 20 NW2d 181 (1945) cases show that, where the fiduciary does not completely prevail, or where the fiduciary was partially to blame for bringing about unnecessary litigation, the fiduciary rather than the estate should be responsible for the attorney's fees.

In the present case, respondents competely prevailed as petitioner's request to have them removed as fiduciaries was ultimately

denied. Indeed, petitioner all but concedes that his allegations of misconduct were never even resolved in the probate court. As noted above, petitioner's request for removal was being held in abeyance at the time he took the prior appeal. At the hearing on respondents' motion for attorney fees, petitioner argued that respondents should not be allowed to recover fees for defending an appellate issue which respondents knew full well this Court would not address on the merits. In response, respondents' counsel pointed out that petitioner filed an extensive and convoluted brief in which petitioner raised the issue of alleged misconduct and went so far as to ask this Court to remove respondents as fiduciaries. Counsel testified that he then made a strategic decision to defend these allegations on the merits, a decision which the probate court found to be proper:

> There has been both oral testimony, subject to cross examination as well as a written description of the services, as an exhibit which has been received, and it outlines what something was done on the date it done, and how long it took to do it. The oral testimony is likewise; what needed to be done; what the appeal was about, and Mr. Condit indicated very clearly that he tried to sort out what he was doing on behalf of these two brothers, primarily in the area of preventing them from being removed as cofiduciaries. He indicated that there were allegations of fraud as well as the allegations that they should be removed. The court is satisfied that they made a proper decision to retain Mr. Condit in order to defend this action, and as a (sic) ruled the previous time, and don't have to rerule today, but I'll restate it on the record, the services he performed in defending the appeal, in this Court's opinion, did not personally benefit these brothers. It benefitted the estate...
>
> The particular allegations of unprofessional conduct as well as allegations concerning the brothers themselves all necessitated that this amount of time be spent, and that these services be performed — those services being of a benefit to the estate, the court will allow the fees which the court considers to be fair and reasonable in the amount of $7,068.75 and costs in the amount of $113.22.

Pursuant to Valentino, supra, legal services performed on behalf of fiduciaries in defense of unwarranted allegations of wrongdoing benefit the estate. Accordingly, we conclude that it was not error

for the probate court to order respondents' attorney fees to be paid from the estate.

Lastly, respondents' request for costs and attorney fees is granted. We assess costs on appeal of $1,500 against petitioner, William Ortman, for the reason that the Court is convinced that the appeal was taken without any reasonable basis for belief that there was a meritorious issue to be determined on appeal.

MCR 7.216(C)(1)(a). Wilson v Knight-Rider Newspapers, Inc., Mich App; NW2d (Docket No. 123323, rel'd 5/9/91).

Affirmed.

/s/ Richard Allen Griffin
/s/ Martin M. Doctoroff
/s/ Thomas J. Brennan

STATE OF MICHIGAN
COURT OF APPEALS

July 24, 1989

Ms. Deborah Gaskin
Attorney Grievance Commission
243 West Congress
Suite 256
Detroit, MI 48226

Received
Attorney Grievence Commission
1989 Jul 25 AM 11:42

RE: William A. Ortman, Esq. P#18540
Michigan Court of Appeals cases:
In the Matter of the Estate of Marcella G. Ortman, #97374;
The Estate of Marcella G. Ortman, #98872;
In Re Frank J. Ortman, Living Trust, #101440

Dear Ms. Gaskin:

Recently, the above-named attorney appeared before a panel of this court. In the above cases, Mr. Ortman sued the estate while also acting as co-counsel and, in addition, being an heir of the estate.

This representation suggests a conflict of interest pursuant to M.R.P.C. 1.7 (a) (b) and M.R.P.C. 1.8 (j) and perhaps a violation of other Rules of Professional Conduct.

Judges Weaver and Wahls, the other members of the panel assigned to these cases, have discussed and agreed to refer this matter to your office for investigation and any resolution which you may deem appropriate.

If we can be of any further assistance, please do not hesitate to contact any of us.

Very truly yours,
Mark J. Cavanagh

MJC/lb

92-51 (2)

FILED
JUL 24 1992
OFFICE OF THE CLERK

No. 813

In The

Supreme Court of the United States

October Term, 1992

WILLIAM ANDREW ORTMAN,

Petitioner,

v.

ORTMAN BROS., CERTAIN LAWYERS, JUDGES AND COURTS OF MICHIGAN

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

AND APPENDICES

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1629 West Lafayette Boulevard, Detroit, MI 48216 (313) 962-6230

COUNTER STATEMENT OF THE QUESTION PRESENTED

I.

WHETHER THE SELF-INFLICTED LEGAL TRIALS AND TRIBULATIONS ENCOUNTERED IN VARIOUS MICHIGAN COURTS BY PETITIONER AND ATTORNEY, WILLIAM ANDREW ORTMAN, AS DESCRIBED IN HIS PETITION WARRANT THE EXERCISE OF JUDICIAL DISCRETION BY THE UNITED STATES SUPREME COURT BY WAY OF WRIT OF CERTIORARI?

PARTIES TO THE PROCEEDINGS

Contrary to Petitioner's representations, the only parties to the identified proceedings in the Michigan Courts are Petitioner, William A. Ortman, his brothers, John R. Ortman and James F. Ortman, the family partnership known as The Ortman Company and the family corporation known as Ort-Fam, Inc.

The other "parties" named and unnamed on page ii of the Petition are not litigants but rather judges and lawyers whose misfortune it has been to adjudicate proceedings and/or represent clients in lawsuits involving Petitioner, William A. Ortman.[1]

---

[1] **It should be noted that this Brief does not address those separate and distinct proceedings involving Petitioner, William A. Ortman, in the Kalamazoo County Circuit Court or any appeals therefrom. This specific subject matter will be addressed in a Brief to be filed by the law firm of Miller, Canfield, Paddock and Stone.**

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No. 813

In The

Supreme Court of the United States

October Term, 1992

WILLIAM ANDREW ORTMAN,

Petitioner,

v.

ORTMAN BROS., CERTAIN LAWYERS, JUDGES AND COURTS OF MICHIGAN

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

OPINIONS BELOW

Petitioner's only reference and identification of Court opinions is to the June 25, 1991 Michigan Court of Appeals Opinion affirming in Case No. 118573 the April 19, 1989 Lapeer County Circuit Court Order of Dismissal and affirming in Case No. 131217 the June 27, 1990 Oakland County Circuit Court Order Taxing Costs Against William A. Ortman in the amount of $3,586.70. As noted by Petitioner, this Court of Appeals Opinion was subsequently addressed by a January 31, 1992 Michigan Supreme Court Order which granted William A. Ortman's Motion for Immediate Consideration and then denied his Delayed Application for Leave to Appeal.

The other lower court orders from the Michigan Court system contained in Petitioner's Appendix have not been identified pursuant to Supreme Court Rule 14.

It should also be noted that Petitioner's Application and Supplemental Application for Extension of Time addressed a prospective Petition for Writ of Certiorari to the *Supreme Court* of Michigan. His filed Petition for Writ of Certiorari is addressed to the Michigan Court of Appeals, the intermediate appellate court in Michigan.

JURISDICTIONAL STATEMENT

Petitioner's "Jurisdictional Statement" does not comply with Supreme Court Rule 14E. It identifies no "grounds on which the jurisdiction of this Court is invoked." It fails to identify the specific lower court judgment sought to be reviewed. Lastly, it identifies no statutory provision which would confer jurisdiction on the United States Supreme Court.

Simply put, Petitioner has not and cannot advance any "special and important reasons" as meaningful considerations for prospective intervention by the United States Supreme Court under the criteria established in Supreme Court Rule 10. There are no federal questions involved. The June 25, 1991 Court of Appeals Opinion merely concerned itself with routine questions of civil jurisdiction and costs. For Petitioner to suggest (Petition, page xiv) that this pronouncement "could cause the collapse of the entire nation" does not inspire one's confidence in the credibility of his advocacy.

CONSTITUTIONAL PROVISIONS

Contrary to Petitioner's representations, there are absolutely no constitutional provisions, treaties, statutes, ordinances or regulations involved in the lower court litigation which would form the basis for a Writ of Certiorari.

RAISING OF FEDERAL QUESTIONS

Respondents concede that Petitioner, William A. Ortman, has an obsession with "federal questions" and is prone to vigorously invoke their presence, whether imagined or otherwise.

In its unanimous opinion of June 25, 1991, the Michigan Court of Appeals, after censuring William A. Ortman for committing an affront to the Court, "an affront knowingly caused by an officer of the Court" addressed Petitioner's constitutional concerns as follows:

> "Appellant's claim of violations of due process and equal protections of the laws are meritless. Appellant had the option of reactivating his Oakland Circuit Court action but chose to "judge shop" instead. Having suffered the sanction of dismissal as a result of his effrontery, he cannot be heard to now claim a deprivation of his rights. We find no abuse of discretion and affirm the lower court." (Respondents' Appendix, p. C-5)

COUNTER STATEMENT OF FACTS

Petitioner, William A. Ortman of Farmington Hills, Michigan is a member of the State Bar of Michigan. He has two brothers, John R. Ortman, who lives in Lapeer, Michigan and James F. Ortman, who lives in Frankenmuth, Michigan. Each brother has a one-third (1/3) interest in Ort-Fam, Inc., a Michigan corporation and The Ortman Company, a Michigan co-partnership. Neither John R. Ortman nor James F. Ortman are attorneys. The Ortman Company, Ort-Fam, Inc., and the Ortman brothers, individually and with their respective wives, own certain parcels of real estate. Some of the real estate, is located in Lapeer County, Michigan, but other

real estate is located in Detroit and Kalamazoo, Michigan, and Regan County, Texas.

On December 5, 1988 Petitioner, William A. Ortman commenced proceedings in the Oakland County, Michigan Circuit Court, (Case No. 88-361134 CR) against The Ortman Company, Ort-Fam, Inc., and John R. Ortman and James F. Ortman. The Trial Judge refused to disqualify himself and was sustained by the Chief Judge. Unhappy with the way matters were proceeding against him, William A. Ortman then voluntarily dismissed the Oakland County proceedings and travelled to Lapeer County, Michigan where on February 16, 1989 he refiled the substantially identical Complaint against the same Defendants, (carefully crossing out "Pontiac, Michigan" and substituting "Lapeer" but neglecting to revise paragraph 111 of his Complaint which informed the Lapeer County Circuit Court that "the subject of this action is situated in Oakland County, Michigan"). (Lapeer County Case No. 89-013967-CR(B))

Upon commencement of the Lapeer County proceedings, William A. Ortman, without notice to Defendants, made two chambers visits to the Honorable Norman A. Baguley for the purposes of obtaining ex parte relief. On February 16, 1989, he obtained an Order entitled Appointment of Receiver Pendente Lite and on February 21, 1989, he secured a Restraining Order and Order to Show Cause. Although Defendants were not privy to the circumstances surrounding the entry of these Orders, there was a dispute as to whether Judge Baguley was "fully advised in the premises." In a subsequent Brief, William A. Ortman made the following representation to the Michigan Court of Appeals:

> It was disclosed to the circuit judge at the time of filing that the suit had been previously filed and voluntarily dismissed in Oakland County (in

> compliance with MCR 2.504) for the reason that the judge there had refused to follow the laws as made and provided. Assurances were pronounced that such transgressions did not happen in Lapeer County, although it was pretty well known that such happenings did occur "down below" in Oakland County. (Page 1)

However, when inquiry was made of the Circuit Judge as to the accuracy of this paragraph, his recollection was significantly different. (See December 8, 1989 correspondence – Appendix, pp. A-1 - A-3)

Upon receipt of the Ex Parte Orders, Defendants filed responsive Motions for:

1. Change of Venue Improperly Made.
2. Termination of Receiver Pendente Lite.
3. Costs and Stay.
4. Termination of Temporary Restraining Order.

In the interim, Evald H. Johnson, the Ex Parte Receiver, (a CPA nominated by William A. Ortman) vigorously embarked upon his "duties" and, without notice, withdrew approximately $30,000 from an Ort-Fam, Inc., bank account in Frankenmuth, Michigan, resulting in numerous checks being returned for insufficient funds.

On March 6, 1989, the parties appeared at a show cause hearing and upon being apprised of the situation, Judge Baguley entered an Order Staying Proceedings, Maintaining Status Quo and Scheduling Hearing Date. This Order halted any further activities of the Receiver, continued the status quo with respect to the parties' business affairs and scheduled a hearing date.

On April 7, 1989, an Evidentiary Hearing was conducted before Judge Baguley with testimony having been presented and exhibits received.

Ralph J. Kliber, a distinguished CPA and attorney, testified that William A. Ortman and his brothers, John and James, are the three sons of Frank and Marcella Ortman, now deceased. Mr. Kliber described his personal, professional and fiduciary relationship with the Ortman family since the mid-1940's. Mr. Kliber then described The Ortman Company, a Michigan co-partnership and Ort-Fam, Inc., a Michigan corporation and the sons' one-third (1/3) ownership in each entity. The corporation did not own any real estate or do business in Lapeer County. He was the resident agent at his Detroit office. Historically, Mr. Kliber prepared annual financial statements and tax returns. In his judgment, the affairs of the corporation were being conducted honestly, openly and above board and there was absolutely no necessity for the appointment of a Receiver.

Ralph J. Kliber then described the Michigan Partnership known as The Ortman Company. It owns real estate located in Lapeer County, Michigan, Regan County, Texas and Kalamazoo, Michigan, the latter parcel being the subject of certain litigation in Kalamazoo County Michigan Circuit Court. Therein, the Honorable William G. Schma entered a December 2, 1988 Order requiring The Ortman Company to convey the Kalamazoo property. Thus, jurisdiction of that asset was in the Kalamazoo County, Michigan Circuit Court. Mr. Kliber also prepared annual financial statements and tax returns for the Partnership and in his professional opinion, there was no necessity for receivership with respect to The Ortman Company.

With respect to the previous Oakland County litigation, a certified copy of William A. Ortman's Complaint in case number 88-361134 was received as Exhibit D and a certified copy of the docket entries was received as Exhibit E. A comparison of the former Oakland County Complaint with the Lapeer County Complaint disclosed

that they were substantially identical and that the same parties were involved and the same relief requested. The Court was then apprised of the circumstances surrounding William A. Ortman's Voluntary Dismissal of the prior Oakland County Proceedings. Specifically, the Court was advised as to William A. Ortman's attempt to default not only his brothers but also the family corporation and partnership; his unsuccessful effort to disqualify Circuit Court Judge Steven N. Andrews and the matters still pending before Judge Andrews in March of 1989 *after* commencement of the Lapeer litigation. Judge Baguley then observed:

> THE COURT: Let's look at it this way. I just have a real problem with you, Mr. Ortman, because if you started a case in Oakland County and then let's say you properly dismissed as to all defendants. On your summons that you filed in this Court it says there is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this Court nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge. How could you file that? (tr. pg. 40-41) How can you make that statement when you did file a suit in Oakland County with the same parties, same transactions and dismissed it? (tr. pg. 41)

No satisfactory explanation was provided by William A. Ortman. The Court then observed:

> And my position is that the whole idea of that requirement is to stop forum shopping and judge shopping and it is pretty obvious what happened when you got turned down twice on disqualification in Oakland County, you couldn't take it so you decided to try it someplace else, and I am not going to let it happen. (tr. pg. 45)

The Court then ordered dismissal of the Lapeer County litigation. The Court's written Order of Dismissal was entered on April 19, 1989. Subsequently, the Court entered its Order Denying Motion for Rehearing and Reconsideration on June 5, 1989. William A. Ortman then filed an appeal with the Michigan Court of Appeals (No. 118573).

On April 11, 1989 (subsequent to the Lapeer Court's oral Order of Dismissal but prior to entry of the formal Order) The Ortman Company, John R. Ortman and James F. Ortman and their respective wives, filed a lawsuit in Oakland County Circuit Court against William A. Ortman and Lavina M. Ortman. Plaintiff's Complaint contains three counts seeking court-ordered sale and/or partition of real estate; dissolution of a partnership; allowance of partnership accountings; and compensation for tortious conduct committed by Defendant, William A. Ortman. The family corporation, Ort-Fam, Inc., is not a party in Oakland County as it was in Lapeer County. Sheila D. Ortman, Virginia A. Ortman and Lavina M. Ortman were not parties in Lapeer County but are parties in the Oakland County action.

As noted above, James F. and Virginia A. Ortman reside in Saginaw County, John R. and Sheila D. Ortman reside in Lapeer County and Defendants William A. and Lavina M. Ortman reside in Oakland County. The Ortman Company, a Michigan co-partnership, is not currently registered since Defendant, William A. Ortman, refused to sign the necessary Certificate of Co-Partnership.

Some of the real estate is located in Lapeer County, Michigan, but other real estate is located in Kalamazoo, Michigan and Regan County, Texas.

When William A. Ortman filed the *original* Oakland County Circuit Court lawsuit (File No. 88-361134 CR) in

December of 1988 he pleaded, under oath, that The Ortman Company partnership was established in Oakland County, Michigan. Also, on February 1, 1989, William A. Ortman advised the Honorable Steven N. Andrews, Oakland County Circuit Judge, that the Ortman Company is a Michigan partnership established in Oakland County.

Subsequently, William A. Ortman and Lavina M. Ortman filed their Motion for Summary Disposition Under MCR 2.116 or in the Alternative, for Change of Venue Under MCR 2.223 including costs and fees; for sanctions. Plaintiffs filed an Answer to Motion and Affidavit of James F. Ortman. Briefs were filed and after oral argument on May 30, 1989, the Honorable Fred M. Mester entered an Order Denying Motion for Summary Disposition, or in the Alternative, for Change of Venue dated June 12, 1989. William A. Ortman then filed a delayed Application for Leave to Appeal to the Michigan Court of Appeals.

On December 6, 1989, the Court of Appeals entered its Order dismissing William A. Ortman's Appeal and taxing actual costs, including a reasonable attorney's fee, in favor of Plaintiffs and against Defendants. (See attached Order – Appendix, p. B-1) Upon the filing of a Taxed Bill of Costs and after review of Defendants' Objections, the Chief Clerk taxed costs of Three Thousand Five Hundred Eighty-Six and 70/100ths ($3,586.70) Dollars in accordance with MCR 7.219.

Subsequently, Defendants filed their Motion for Rehearing which was denied by the Court of Appeals by Order dated January 19, 1990. Thereafter, Defendants filed their Application for Leave to Appeal to the Michigan Supreme Court which was denied by Order entered March 30, 1990.

When William A. Ortman and Lavina M. Ortman continued their refusal to pay the costs and attorney fees, a Motion for Contempt was filed in the Oakland County Circuit Court and a hearing was held before the Honorable Fred M. Mester, Circuit Judge, on June 20, 1990.

On June 27, 1990 the Order for Payment of Costs and Attorney Fees, to Show Cause and Setting Appeal Bond was entered by the Court and William A. Ortman filed a Claim of Appeal to the Michigan Court of Appeals (No. 131217).

On July 25, 1991 the Michigan Court of Appeals, in a unanimous consolidated opinion affirmed the lower court orders of the Oakland County and Lapeer County Circuit judges. (See attached Order – Appendix, pp. C-1-C-6) Defendants then filed their Delayed Application for Leave to Appeal with the Michigan Supreme Court. On January 31, 1992, the Michigan Supreme Court denied the appeal. (See attached Order – Appendix, p. D-1)

Since the Michigan Court of Appeals had lifted any stay of proceedings except as to the attorney fee award and had authorized the Oakland Circuit Court to "move forward in its discretion" the trial judge proceeded to adjudicate the disputes between William A. Ortman and his brothers and The Ortman Company with respect to real estate and the partnership.

Previous to any stay, the trial court on July 27, 1990, entered its Order for Sale of Real Estate, Dissolution of Partnership and for Accountings. Subsequently, the court on January 9, 1991, entered its Order authorizing sale of Texas Property. On February 27, 1991, the Court entered its Order authorizing sale of Ranchwood property. The cause was scheduled for trial and after the taking of proofs (William A. Ortman did not appear) the Court entered its April 29, 1992, Judgment on

Accounting and retained continued jurisdiction for sale of the remaining property and winding up of the partnership affairs. No appeals have been taken from any of these Orders or Judgment.[1]

Meanwhile, post-appellate proceedings have occurred in the Lapeer County Michigan Circuit Court.

When the Lapeer trial judge entered the Order of Dismissal in May of 1989, it provided ". . . that the matter of costs and attorney fees to be awarded to Defendants for having to defend this cause shall be deferred until further Order of the Court." On motion of Defendants and following a hearing, the Court on January 13, 1992 entered its Order for Return of Funds Seized and For Costs and Attorney Fees. Therein the Court ordered William A. Ortman to pay reasonable costs and attorney fees in the amount of Ten Thousand Three Hundred Seventy-Four and 58/100ths ($ 10.374.58) Dollars pursuant to MCR 2.114 and MCR 2.113. No appeal was taken from this Order.

William A. Ortman belatedly filed a Motion for Disqualification of the Trial Judge which was denied by Order entered May 12, 1992. No request to have Plaintiff's motion reassigned to another judge for a decision de novo was made by William A. Ortman pursuant to MCR 2.2003(C), nor was an appeal taken.

When Plaintiff, William A. Ortman, and "Receiver" Evald H. Johnson refused to comply with the Court's Orders for payment of costs and attorney fees and for return of funds previously seized, the trial judge entered Orders to Show Cause and following a hearing

---

[1] **William A. Ortman has filed claims of appeals with respect to the trial court's finding of contempt against him as well as the trial court's Order authorizing distribution of Ranchwood sale proceeds, including payment of fees. However, these appeals have not been perfected and no Briefs have been filed.**

entered its Order Re: Evald H. Johnson and Order Re: William A. Ortman. Said Orders gave Respondents until May 26, 1992 to honor the Court's previous Orders or be found in contempt of Court.

Respondent, Evald H. Johnson, submitted an accounting and turned over certain funds to the Court but unlawfully withheld Two Thousand Five Hundred Three ($2,503.00) Dollars. Respondent, William A. Ortman, continued to totally disregard the Court's Orders. Defendants' Motion for Punishment of Evald H. Johnson and William A. Ortman are now pending a hearing before Lapeer County Circuit Judge.[2]

Having failed to achieve a favorable civil adjudication in any state court in Michigan, William A. Ortman then turned to the criminal law for relief. However, in response to his Request for Grand Jury, the Oakland County Michigan Circuit Court bench, en banc, entered its August 9, 1991 Order Denying Petition. (See attached Order – Appendix, p. E-1)

William A. Ortman then invoked the Federal Court system and filed an August 26, 1991 Complaint against 55 defendants, including four counties, seven courts, two cities, ten lawyers, five law firms, seven Supreme Court Justices, seven Court of Appeals' Judges, four Circuit Judges, two Probate Judges, two District Court Judges, and related clerks and individuals. In response to Motions filed by the Defendants, the United States District Judge on April 13, 1992 entered an Order Granting Summary Judgment. (See attached Order –

---

[2] **At a May 11, 1992 hearing in the Lapeer County Circuit Court, Petitioner, William A. Ortman, was searched by court officers and a loaded revolver was found in his briefcase. (Inexplicably, William A. Ortman possesses an unrestricted license to carry a concealed weapon). The trial judge admonished Mr. Ortman not to bring the weapon into court again.**

Appendix, pp. F-1-F-2) Proceedings are now pending for the Court's determination of taxable attorney fees and costs pursuant to Rule 11 FRCP.

CONCLUSION

It is apparent that William A. Ortman's trials and tribulations encountered in various Michigan Courts are self-inflicted and do not form the basis for the exercise of judicial discretion by the United States Supreme Court to issue a Writ of Certiorari.

In fact, it is Petitioner's brothers, James F. Ortman and John R. Ortman, joined by a legion of Michigan judges and attorneys who are in fact aggrieved and long suffering. As noted by the Michigan Court of Appeals:

> Appellant's brief in the instant appeal contains the same type of groundless, unfounded and scandalous allegations his earlier briefs contained and constitutes an utter and complete disregard of the requirements that an issue be fairly presented to this Court. His assertion that Judge Mester was without authority to tax costs is utterly preposterous as the imposition of those costs was done in direct response to an order of this Court. Appellant must be put on notice that his lack of disregard for the court rules has consequences, chief of which is his being required to pay the costs for parties subjected to defending themselves against his meritless and vexatious proceedings. We affirm the taxation of costs. (Respondents' Appendix, p. C-5)

This frivolous Petition for Writ of Certiorari by William A. Ortman should be summarily denied and double costs should be assessed against Petitioner in

favor of Respondents pursuant to Supreme Court Rules 42 and 43.

Respectfully submitted,

CONDIT, McGARRY and SCHLOFF, P.C.

By: /s/ RICHARD P. CONDIT (P12101)
Counsel of Record

Attorneys for John R. Ortman, James F. Ortman, The Ortman Company and Ort-Fam, Inc.
6905 Telegraph Road, Suite 215
Bloomfield Hills, MI 48310
(313) 645-5205

Dated: July 24, 1992

APPENDICES TO BRIEF IN OPPOSITION

• • •

APPENDIX A

LETTER FROM HON. NORMAN A. BAGULEY

THE FORTIETH JUDICIAL CIRCUIT OF MICHIGAN
NORMAN A. BAGULEY,
CIRCUIT JUDGE

LAPEER COUNTY COMPLEX BUILDING
255 CLAY ST. • LAPEER, MICHIGAN 48446 (313) 667-0320

Mr. Richard P. Condit
Attorney at Law
Suite 215
6905 Telegraph Road
Birmingham, MI 48010

December 8, 1989

Re: Ortman v The Ortman Company, et al
Case No. 89-013967-CR(B)

Dear Mr. Condit:

This is in reply to your letter of December 6, 1989, regarding the above matter and concerning Mr. William A. Ortman's appearance in my chambers on February 21, 1989.

I believe that it was on February 16, 1989, (since that was the date the case was filed and the Appointment of Receiver Pendente Lite was signed by me) that Mr. Ortman first appeared. There was discussion concerning the case but I do not recall what all was said. Then on February 21, 1989, I was presented with a proposed Restraining Order and Order to Show Cause. I believe that on one of those occasions there was mention of some action having been taken previously

in Oakland County Circuit Court but I am not all all certain.

I have no doubt that I mentioned that we in Lapeer County examine TRO's much more closely than Oakland County does. This was based on the fact that I have rejected many proposed TRO's offered by Oakland County attorneys for failure to comply with MCR 3.310(B) requirements.

I am fairly certain that I was not aware of what had actually transpired in any prior Oakland County Circuit Court action. I remember being shocked at the list of docket entries presented to me in court at one of the hearings. That was the first occasion on which I was aware of the disqualification motions filed against the Oakland judges and the related matters.

I can state with confidence that the issue of proper venue did not occur to me until the defendants raised it in their pleadings. Nor was I otherwise aware that the Oakland County case had been "voluntarily dismissed" without the consent of both parties. I can state unequivocally that I was not advised that the dismissal occurred "for the reason that the judge there had refused to follow the laws . . ." Such a statement would have immediately raised a red flag in my mind about a venue issue. As I stated above, any reference to procedures in Oakland County being different from ours was directed to TRO's and other procedural practices, certainly not toward their quality of decision making!

It is my practice not to base any decisions or actions on anything not a matter of record. Since I do not favor making a record or memorandum of discussions with attorneys supporting the issuance of TRO's as required by MCR 3.310 (B)(1)(c), I tell them not to talk about it. I am certain I did so with Mr. Ortman.

It would be difficult for me to execute an affidavit due to the uncertainties I have mentioned. However, I firmly believe that the Court of Appeals will only consider matters of record. That has been my experience with that court.

If I can be of further assistance, please let me know.

Very truly yours,

Norman A. Baguley
Circuit Judge

NAB:ams

cc: Mr. William A. Ortman
Attorney at Law

APPENDIX B

ORDER

(State of Michigan — Court of Appeals)

(Dated December 6, 1989)

(JOHN ORTMAN v WILLIAM ORTMAN — Docket No. 118574)

BEFORE: Myron Wahls, P.J., and
Sullivan and Brennan, JJ.

The Court orders, pursuant to MCR 7.216(A)(10), that the delayed application for leave to appeal is DISMISSED. Appellants submitted a brief not in conformance with MCR 7.212(C)(5), and additionally failed to provide this Court with a transcript of the circuit court's bench opinion as required by MCR 7.205(B)(2). See also MCR 7.212(H).

Pursuant to MCR 7.216(C)(1)(b), plaintiffs may tax their actual costs, including a reasonable attorney's fee, for their expenses in opposing this application. Damages shall not exceed actual damages and expenses incurred by appellees, including reasonable attorney fees. Any dispute over the proper amount of costs to be taxed pursuant to this order shall be resolved by the trial court. MCR 7.216(C)(2).

This Court retains no further jurisdiction.

/s/ Myron H. Wahls,
Presiding Judge

Dated: December 6, 1989

APPENDIX C

OPINION

(State of Michigan — Court of Appeals)

(Entered June 25, 1991)

(WILLIAM A. ORTMAN, Plaintiff-Appellant, v THE ORTMAN COMPANY, ORT-FAM, INC., JOHN R. ORTMAN and JAMES F. ORTMAN, Defendants-Appellees — Case No. 118573; JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES F. ORTMAN, VIRGINIA A. ORTMAN and THE ORTMAN COMPANY, Plaintiffs-Appellees, v WILLIAM A. ORTMAN and LAVINA M. ORTMAN, Defendants-Appellants — Case No. 131217)

BEFORE: Danhof, C.J., and
Holbrook, Jr. and Sullivan, JJ.

PER CURIAM.

These two consolidated cases represent more or less the same underlying controversy, the partition of property and the dissolution of two family business entities. In No. 118573, appellant William Ortman appeals from an order of the Lapeer Circuit Court dismissing his action for noncompliance with court rules and the apparent pendency of action in Oakland Circuit Court. In No. 131217, appellant Ortman appeals from an order of the Oakland Circuit Court taxing costs in the amount of $3,586.70. We affirm the orders of the respective courts.

The litigation concerns properties owned by appellant and his two brothers. The properties are managed by a partnership, Ortman Company, and a corporation, Ort-Fam, Inc., both of which entities are in the hands of the three Ortman brothers. Appellant originally filed suit against his brothers and the two business entities in Oakland Circuit Court, alleging in 160 consecutively

numbered paragraphs that his brothers were fraudulently and wastefully handling the various assets involved to his detriment. A temporary restraining order was issued and appellant order [*sic*] to post a $265,000 bond. At a January 4, 1989, hearing, Oakland Circuit Judge Steven Andrews denied appellant's motions for default judgment, appointment of a receiver and appointment of a partition commissioner. Appellant moved to disqualify Judge Andrews and upon his refusal to do so, and the chief judge's concurrence, appellant voluntarily dismissed the action on February 10, 1989.

Five days later, appellant filed an identical action in Lapeer Circuit Court. "Lapeer County" was substituted for "Oakland County" throughout the complaint except in paragraph 111. On the day of filing, Lapeer Circuit Judge Norman Baguley, granted appellant ex parte the appointment of a receiver for the business entities and a restraining order against his brothers and the business entities.

At a show cause hearing, the defendants filed an appearance and represented to Judge Baguley that there was an identical action pending in Oakland Circuit Court since their motion to set aside default judgments was still awaiting a decision. The proceedings were stayed until April 7, 1989, at which time Judge Baguley, angered over appellant's "judge shopping", dismissed the case, telling appellant he would have to reactivate his Oakland Circuit case.

In the meantime, on April 11, 1989, appellant's brothers, their wives, and Ortman Company filed suit against appellant in Oakland Circuit Court, seeking partition. Oakland Circuit Judge Fred Mester denied appellant's motion for summary disposition or change of venue. Appellant filed a delayed application for leave to

appeal the dismissal to this Court (No. 118574), asserting Oakland Circuit Court could not exercise jurisdiction because of the pending Lapeer County action. This Court denied appellant's application for leave to appeal and sua sponte awarded the appellees actual costs, including reasonable attorney fees, pursuant to MCR 7.216(C)(1)(b). The circuit court taxed costs in the amount of $3,586.70 and appellant sought leave to appeal to the Supreme Court, which was denied. Appellant now appeals the taxing of costs to this Court.

No. 118573

Restating appellant's two issues as one, appellant asks whether the trial judge properly dismissed, without prejudice, his Lapeer Circuit Court action in view of the previous Oakland County litigation and the then state of the pleadings, the litigants and the subject matter involved.

We review the dismissal of an action for failure to comply with the court rules for an abuse of the trial court's discretion. *Houston* v *Southwest Detroit Hospital*, 166 Mich App 623, 628-629; 420 NW2d 835 (1987), lv den 431 Mich 852 (1988).

MCR 2.113(C)(2)(a) requires a disclosure by a plaintiff as follows:

> (2) The caption of a complaint must also contain either (a) or (b) as a statement of the attorney for the plaintiff, or of a plaintiff appearing without an attorney.
>
> (a) There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been assigned to a judge, nor do I know of any

> other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

Contrary to appellant's assertion that he told Judge Baguley about the Oakland County action when he requested the appointment of a receiver and restraining order, the record is clear that Judge Baguley was first meaningfully apprised of the other case when the defendants informed him about it at the first hearing.

At the second hearing, Judge Baguley focused on appellant's violation of MCR 2.113(C)(2) and what he termed an attempt at "judge shopping" and appellant's noncompliance with MCR 2.114, the so-called signature rule. Judge Baguley thereupon dismissed the action in what appellant now asserts was an abuse of discretion.

While MCR 2.114(E) does not specify dismissal of an action as a sanction for noncompliance with the signature requirement, neither does it disallow dismissal as a sanction. MCR 2.504(B), the involuntary dismissal rule, acknowledges the power of the trial court to enter a dismissal both in situations in which it is specifically authorized by another rule and in situations, as with MCR 2.114, in which the rule does not specify the sanction.

The facts of the instant case clearly warranted dismissal as a sanction. Appellant is an attorney, representing himself, and Judge Baguley could well consider him to be aware of the court rules and of the judiciary's intense dislike for judge and/or forum shopping. Seeking ex parte relief from the Lapeer Circuit Court without informing Judge Baguley of the Oakland Circuit action, going so far as to submit a pleading stating there was

no other action pending, was an affront to the court, an affront knowingly caused by an officer of the court.

Appellant's claim of violations of due process and equal protections of the laws are meritless. Appellant had the option of reactivating his Oakland Circuit Court action but chose to "judge shop" instead. Having suffered the sanction of dismissal as a result of his effrontery, he cannot be heard to now claim a deprivation of his rights. We find no abuse of discretion and affirm the lower court.

No. 131217

Appellant also challenges this Court's award of actual costs, including reasonable attorney fees, pursuant to MCR 7.216(C)(1)(b) and the amount of those costs as taxed by the trial court.

Under MCR 7.216, this Court can sua sponte assess actual or punitive damages when it determines that an appeal or any of the proceedings in an appeal were vexatious because there was a lack of any reasonable basis for the belief the issue or issues were meritorious. Appellant's underlying appeal (No. 118574) was dismissed by this Court for failure to comply with the court rules and was found to be vexatious.

Appellant's brief in the instant appeal contains the same type of groundless, unfounded and scandalous allegations his earlier briefs contained and constitutes an utter and complete disregard of the requirements that an issue be fairly presented to this Court. His assertion that Judge Mester was without authority to tax costs is utterly preposterous as the imposition of those costs was done in direct response to an order of this Court. Appellant must be put on notice that his lack of disregard for the court rules has consequences, chief of which is his being required to pay the costs for

parties subjected to defending themselves against his meritless and vexatious proceedings. We affirm the taxation of costs.

Affirmed.

/s/ Robert J. Danhof
/s/ Donald E. Holbrook, Jr.
/s/Joseph B. Sullivan

Dated: June 25, 1991

APPENDIX D

ORDER

(State of Michigan — Supreme Court)

(Entered January 31, 1992)

(WILLIAM A. ORTMAN, Plaintiff-Appellant, v THE ORTMAN COMPANY, ORT-FAM, INC., JOHN R. ORTMAN and JAMES E. ORTMAN, Defendants-Appellees; JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES E. ORTMAN, VIRGINIA A. ORTMAN and THE ORTMAN COMPANY, Plaintiffs-Appellees, v WILLIAM A. ORTMAN and LAVINA M. ORTMAN, Defendants-Appellants — SC: 92776, 92777; COA: 118573, 131217; LC: 89-13967, 89-367786)

On order of the Court, the motion for immediate consideration and the delayed application for leave to appeal are considered. The motion for immediate consideration is GRANTED. The delayed application for leave to appeal is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Certification signed by: Corbin R. Davis,
Clerk

Dated: January 31, 1992

APPENDIX E

ORDER DENYING PETITION

(State of Michigan – Circuit Court – County of Oakland)

(IN RE PETITION OF WILLIAM A. ORTMAN REQUEST FOR GRAND JURY)

AT A SESSION of the Court, held in the Courthouse in the City of Pontiac, on August 9, 1991.

PRESENT THE HONORABLES:

Steven N. Andrews, Chief Judge
Robert L. Templin, Richard D. Kuhn, John N. O'Brien, Francis X. O'Brien, Gene Schnelz, Robert C. Anderson, David F. Breck, Jessica R. Cooper, Rudy J. Nichols, JJ.

This matter having come before the Court on Re Petition of William A. Ortman requesting that a Grand Jury be convened and the Court having reviewed the petition in accordance with MCL 767.3 and Local Court Rule 6.107, and the Court being otherwise fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the petition of William A. Ortman be, and the same hereby is, denied.

/s/ Hon. Steven N. Andrews,
Chief Judge

APPENDIX F

ORDER GRANTING SUMMARY JUDGMENT

(United States District Court —
Eastern District of Michigan — Southern Division)

(WILLIAM A. ORTMAN and LAVINA M. ORTMAN, and the ESTATE OF MARCELLA G. ORTMAN, DECEASED, Plaintiffs, vs. STATE OF MICHIGAN, COUNTY OF LAPEER, COUNTY OF OAKLAND, COUNTY OF KALAMAZOO, MICHIGAN SUPREME COURT, COURT OF APPEALS, 40TH CIRCUIT, 6TH CIRCUIT COURT, 9TH CIRCUIT COURT, OAKLAND PROBATE COURT, 9-1 DISTRICT COURT, CITY OF KALAMAZOO, CITY OF FARMINGTON HILLS, RALPH J. KLIBER, GERALD SIMON, RICHARD CONDIT, ALEXANDER MCGARRY, JAMES L. WHYARD, ALAN HARNISCH, SEYBURN, KAHN, GINN, BESS, HOWARD & HARNISCH, SEYBURN, KAHN, GINN, BESS, HOWARD & HARNISCH, P.C.; FISCHER, FRANKLIN, FORD, SIMON & HOGG, CONDIT, MCGARRY & SCHLOFF, P.C. LAURENCELLE & ASSOCIATES, INC.; MICHAEL F. CAVAGNAGH, CHIEF JUSTICE; CHARLES L. LEVIN; JAMES H. BRICKLEY; PATRICIA J. BOYLE; DOROTHY COMSTOCK RILEY, ROBERT GRIFFIN; CONRAD MALLET, JR.; ROBERT J. DANHOFF; DONALD E. HOLBROOK, JR.; JOSEPH B. SULLIVAN; MARK J. CAVANAGH; NORBERT G. JAWORSKI; RICHARD M. MAHER; DAVID H. SAWYER; THOMAS J. BRENNAN; FRED M. MESTER; STEVEN ANDREWS; HUGH DEAN, JR.; NORMAN BAGULEY; MARTIN CLEMENTS; WILLIAM SCHMA; DONALD E. JAMES; MILLER, CANFIELD, PADDOCK & STONE; JAMES E. SPURR; CRAIG R. BUSH; MICHAEL L. CHOJNOWSKI; HARNISCH & ASSOCIATES, P.C.; DONALD E. LITKE AND LINDA B. LITKE, RICHARD HALLIDAY; KALAMAZOO METAL FINISHERS, INC., JOHN DOE, Defendants — Case No. 91-CV-74299 DT)

All defendants herein having filed motions for summary judgment which the court has heard argued, with Plaintiff Ortman's responses thereto, and the court

having studied the briefs, files and records in the case; now, therefore

IT IS ORDERED that summary judgment be and hereby is entered for Defendants herein, for the reasons briefed and argued.

IT IS FURTHER ORDERED, pursuant to Rule 11 of the Federal Rules of Civil Procedure, that each of the Defendants granted their motions for summary judgment this date be and hereby are awarded all attorney fees and costs incurred because of the necessity to file and argue said motions, to be paid by Plaintiff, who is an attorney and represented himself herein. All fees and costs incurred by each Defendant from date of filing of said motion are awarded, as there can be no question but that Plaintiff Ortman's pursuit of this matter after filing of these motions was without reasonable inquiry as to either relevant fact or law.

Petitions for fees and costs shall be filed and served on Plaintiff within 10 days of the date of this order, fully supported by time records and affidavits. If there is no objection to the reasonableness of those fees and costs from Plaintiff within 10 days thereafter, the court will enter its order awarding the amounts requested. If objections are filed, the court will hold hearing thereon prior to making its award.

IT IS SO ORDERED.

/s/ ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE

Dated: April 13, 1992

92-513

Supreme Court, U.S.
FILED
JUL 22 1992
OFFICE OF THE CLERK

No. 813
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

KALAMAZOO METAL FINISHERS, INC.
Plaintiff-Appellee,

vs.

THE ORTMAN COMPANY,
Defendant,

and

WILLIAM A. ORTMAN,
Non-Party Appellant.

BEST AVAILABLE COPY

PLAINTIFF-APPELLEE, KALAMAZOO METAL FINISHER'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FROM THE MICHIGAN SUPREME COURT

James E. Spurr (P33049)
Miller, Canfield, Paddock and Stone
Attorney for Plaintiff-Appellee
444 West Michigan Avenue
Kalamazoo, MI 49007
(616) 381-7030

STATEMENT OF QUESTIONS INVOLVED

I.

SHOULD THE UNITED STATES SUPREME COURT GRANT THE PETITION FOR WRIT OF CERTIORARI?

Kalamazoo Metal Finishers, Inc.
Answers "No."

The Ortman Company Presumably
Answers "No."

William A. Ortman Answers "Yes."

II.

WAS THE MICHIGAN CIRCUIT COURT AWARD OF SUMMARY DISPOSITION APPROPRIATE UPON THE UNDISPUTED MATERIAL FACTS?

Kalamazoo Metal Finishers, Inc.
Answers "Yes."

The Ortman Company
Answers "Yes."
William A. Ortman Answers "No."

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This Brief addresses only those references made by Mr. Ortman to the litigation concerning commercial property located in Kalamazoo, Michigan.

COUNTER-STATEMENT IDENTIFYING ORDERS APPEALED

Appellant ("Mr. Ortman") appeals from an August 30, 1991 Order of the Michigan Supreme Court denying an application for leave to appeal the award of summary judgment in favor of Appellee ("Metal Finishers") and against The Ortman Company. The Ortman Company was the actual Defendant in the Michigan Circuit Court litigation. The Ortman Company did not appeal. (Lodging Exhibit 1 in).

Mr. Ortman refers to various other Orders, one of which does not even exist; most of which were never appealed.

Taken in chronological order:

1. Michigan's Ninth District Court awarded Metal Finishers summary judgment on July 20, 1988. (Lodging Exhibit 2 in). The Ortman Company accepted rental payments after the Notice to Quit was issued, which invalidated the Notice to Quit according to case law. Mr. Ortman never appealed the judgment and should not be permitted to first raise these issues before the United States Supreme Court.

2. Michigan's Ninth District Court entered an Order of Adjournment of a second eviction proceeding August 9, 1988. (Lodging Exhibit 3 in). Mr. Ortman never sought to clarify the status or effect of the order as a final order or have the question certified for interlocutory appeal, and took no action whatsoever - until he now raises it before the United States Supreme Court.

3. Kalamazoo Circuit Judge Schaefer never denied Metal Finishers request for a Temporary Restraining Order. No such order exists. Judge Schaefer saw no urgency to the request for a Temporary Restraining Order and asked that Metal Finishers wait until Judge Schma, the judge to whom the new Michigan circuit action was assigned, was available to the parties. Metal Finishers complied with the request, and later was awarded a Temporary Restraining Order by Judge Schma. (Lodging Exhibit 4 in). The only Defendant, The Ortman Company, was present by counsel and did not oppose the Temporary Restraining Order maintaining the status quo.

4. The Michigan Circuit Court entered a preliminary injunction maintaining the status quo on August 15, 1988. (Lodging Exhibit 5 in). The preliminary injunction was not opposed by The Ortman Company. Mr. Ortman was present in the courtroom on his own behalf and addressed the Court.

5. The Michigan Circuit Court entered a Summary Judgment Awarding Specific Performance and Conveyance of the Real Property December 2, 1988. (Lodging Exhibit 6 in). The award of summary disposition was not opposed by The Ortman Company. Mr. Ortman was present in the courtroom on his own behalf and addressed the Court.

6. Metal Finishers moved the Court of Appeals to dismiss Ortman's appeal for lack of standing before reaching the merits. The Court of Appeals instead reviewed all issues on appeal. The Court of Appeals ultimately agreed that Ortman was not a party to the Circuit Court proceeding and lacked standing to appeal after a full review on the merits. (Lodging Exhibit 7 in). There are no conflicting opinions or decisions.

LACK OF GROUNDS FOR WRIT OF CERTIORARI

In order for Mr. Ortman to establish adequate grounds for his Petition for Writ of Certiorari, Sup. Ct. R. 10 suggests that Mr. Ortman demonstrate:

> 1. Conflicting opinions between different United States Courts of Appeal.
>
> 2. Michigan's Supreme Court has issued a conflicting opinion with respect to a federal question.
>
> 3. The issues involve legal principles of major significance to the nation's jurisprudence, and which should be addressed or settled by the United States Supreme Court.

None of the above dynamics are even remotely involved in this matter.

This case is a commercial dispute between individuals and their related business entities. Mr. Ortman did not wish Metal Finishers to purchase the property pursuant to the option to purchase in the lease because he believes the property is now more valuable than the price set forth in the option. The other Ortman Company partners determined to honor the lease and the option to purchase. Not only does this case have no public interest whatsoever, various members of the bar would be hard pressed to find any aspect of the case at all interesting - even as lawyers. No federal or state agency, subdivision, officer, or question is involved in any manner. The legal principles which contributed to the Michigan Circuit

Court analysis and award of summary disposition include:

a) contract law concerning the exercise of an option to purchase contained within a long term commercial lease;

b) recognition of a partnership, regardless of internal documents and records, when partners hold themselves out to others and regularly conduct business as a partnership; i.e. partnership by estoppel; and

c) the remedy of specific performance as applied to the breach of an option to purchase real property.

Metal Finishers utilized ample, consistent, well established case law for all of the above principles and recognizes no need for new decisions of the United States Supreme Court clarifying or adding to these voluminous bodies of case precedent. The specific decisions supporting the Michigan Circuit and Appellate Courts are provided, ante.

APPELLANT'S MISSTATEMENT OF FACTS

Mr. Ortman's Petition for Writ of Certiorari contain so many gross errors that unfortunately, this section is made necessary.

First, The Ortman Company is hardly "defunct." Mr. Ortman does not get along with his brothers, the other partners, and for some time Mr. Ortman has refused to sign a renewal of the partnership certificate. This does not terminate the partnership. The Ortman Company, at least for all times relevant to this action,

continued to conduct business and hold itself out to others including Metal Finishers as a viable partnership.

As late as January 28, 1989, Mr. Ortman wrote Metal Finishers a threatening letter on stationary emblazoned "The Ortman Company." (Lodging Exhibit 8 in). Mr. Ortman signed as co-partner. This letter alone, setting aside the fact that a) the facts contained within are wholly inaccurate and b) a direct communication with Metal Finishers was a breach of ethics, should be sufficient to:

1. totally destroy Mr. Ortman's credibility in any tribunal as to whether The Ortman Company is defunct; and

2. subject Mr. Ortman to sanctions for otherwise attempting to mislead the Court.

Note that the letter was written while the case was pending before the Michigan Court of Appeals.

COUNTER STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

A. Nature of the Controversy

Metal Finishers, as assignee, entered into a lease agreement with The Ortman Company, a Michigan co-partnership, concerning property in Kalamazoo, Michigan. The lease contained an option to purchase which Metal Finishers chose to exercise. One of the three co-partners of The Ortman Company, Mr. Ortman, opposed Metal Finishers' right to exercise the option. The Ortman Company was unwilling to close the sale without the signature of all its partners.

Metal Finishers was forced to sue The Ortman Company for the specific performance of its right to purchase. Metal Finishers filed a Motion for Summary Disposition. Though not a party, Mr. Ortman contested Metal Finishers' claim for specific performance. The Circuit Court determined that Mr. Ortman was not a party and then ordered specific performance.

Mr. Ortman, however, filed a Claim of Appeal. The Ortman Company did not appeal the Circuit Court decision. Mr. Ortman seeks to appeal a decision in an action in which he was never a party.

B. Proceedings Below

On July 7, 1988, Metal Finishers filed its claim for specific performance against The Ortman Company. On July 12, 1988, Metal Finishers filed a Motion for Preliminary Injunction ("first hearing"). At the first hearing the Michigan Circuit Court allowed Mr. Ortman, as a partner in The Ortman Company, to address the Court. He was not recognized as a party to the action. (Portions of that transcript are attached; lodging Exhibit 9 in).

On October 14, 1988, Metal Finishers filed a Motion for Summary Disposition ("second hearing"). The Ortman Company did not oppose the Motion. (Portions of that transcript are attached; lodging Exhibit 10 in). Mr. Ortman was present at the second hearing. The Michigan Circuit Court allowed him to address the Court on the issue of his standing in the matter. The Michigan Circuit Court found on the record that Mr. Ortman was not a party and had no standing in the action (Portions of that transcript are attached; lodging Exhibit 11 in). The Court then heard Metal Finishers' argument in support of its Motion, noted The Ortman Company's concurrence with the

Motion, and ordered specific performance. (Lodging Exhibit 12 in).

Mr. Ortman took an appeal as of right. The Michigan Court of Appeals affirmed the Michigan Circuit Court Judgment. (Lodging Exhibit 7 in). The Michigan Supreme Court denied Mr. Ortman's application for leave to appeal. (Exhibit 1).

C. Statement of Material Facts

The Ortman Company is a Michigan co-partnership comprised of three brothers; James F. Ortman - Managing Partner, William Ortman, and John Ortman. The Ortman Company owns property on Glendening Road in Kalamazoo, Michigan ("Premises"). Title to the Premises was originally granted to The Ortman Company in 1956. (Lodging Exhibit 13 in). As of June 1, 1988, title to the Premises remained in The Ortman Company. (Lodging Exhibit 14 in).

In 1985 The Ortman Company entered into a Lease Agreement ("Lease" - Lodging Exhibit 15 in) concerning the Premises with Richard Halliday and Alfred Halliday. The Lease was for three years, from May 1, 1985 to April 30, 1988. The rent was $30,000.00 per year, payable in installments of $2,500.00 due on the first of each month. The parties understood the Premises were to be used by Metal Finishers, a business owned and operated by its President, Richard Halliday. (James Ortman Dep., p. 5; lodging Exhibit 16 in).

The Lease afforded Metal Finishers the option to purchase the Premises for $300,000.00 at any time during the three year term. This option was negotiated between the parties. (James Ortman Dep., p. 7).

Paragraph 13 provides for termination of the Lease under certain circumstances. Although on occasion the rent was not paid on time, at no time did The Ortman Company avail itself of its right to terminate. (James Ortman Dep., pp. 6-7) The Ortman Company never gave Metal Finishers the required written notification, which would have allowed 30 days to cure after the notice was received. The Ortman Company never acted to terminate the Lease because of late rental payments, or for any other reason.

As of April 15, 1988, the rent was current through April 30, 1988. (Lodging Exhibit 17 in). On April 21, 1988 Metal Finishers gave written notice of Metal Finishers' intention to exercise the option as described under Paragraph 22 of the Lease to James Ortman. (Lodging Exhibit 18 in). As of May 31, 1988 Metal Finishers had paid all real estate taxes. (Lodging Exhibit 19 in). Metal Finishers attempted to schedule a closing and tendered performance within sixty (60) days of the notification of intent to purchase.

The sale did not close because of internal disputes and disharmony among The Ortman Company partners. (James Ortman Dep. pp. 14-15, 17).

LAW AND ARGUMENT

I. Mr. Ortman's Petition for Writ of Certiorari Should Be Denied

Mr. Ortman cannot satisfy any grounds suggested in Sup. Ct. R. 10. Further, there was no error in the proceedings below.

Mr. Ortman is not a party in the action and lacks standing to appeal. Mr. Ortman is not, and never has been, a party to the action between Metal

Finishers and The Ortman Company. At the second hearing, the Michigan Circuit Court allowed Mr. Ortman to address the Court on the issue of his standing. The Court specifically found that Mr. Ortman was not a party to the action and absent a timely and successful motion to intervene, he had no standing to contest the Motion. (Exhibit 11).

Basic partnership case law dictates the Circuit Court's conclusion that Mr. Ortman is not a party to Metal Finishers' claim against The Ortman Company. A partnership is "a legal entity, separate from the individuals composing it." McIntosh v Detroit Savings Bank, 247 Mich 10; 225 NW 628 (1929). Accordingly, the Circuit Court action against The Ortman Company does not include Mr. Ortman as a party defendant. As Mr. Ortman is not a party; appeals are unavailable to him. Automatic Music and Vending Corp v Liquor Control Commission, 141 Mich App 458, 463; 367 NW2d 413 (1985).

Mr. Ortman could easily have followed that course prescribed in the Court Rules - he could have moved to intervene as a party defendant. Metal Finishers filed its Complaint on July 7, 1988. Mr. Ortman was in the courtroom as early as August 1, 1988, and appeared again on August 15, 1988. Mr. Ortman knew The Ortman Company had retained its own counsel. Mr. Ortman knew the Michigan Circuit Court was concerned with his standing to participate because he was not a party. Further, Mr. Ortman never noticed out his own motion for a hearing. Mr. Ortman complains of a "conspiracy" and of "secret" proceedings when in fact due notice was given to all parties. As an attorney, Mr. Ortman understood full well why he was not considered an "insider" - because he chose to remain a non-party.

II. Summary Disposition Was Appropriate

A. Metal Finishers Met All Requirements of the Lease and Option

The Lease provides that Metal Finishers may exercise the option to purchase the Premises at any time during its three year term.

Although the rent was not always paid on time, in April of 1988, when Metal Finishers notified The Ortman Company of its intention to purchase, all rent for the Premises had been paid in full. Metal Finishers also paid the real estate taxes. Metal Finishers tendered the full purchase price within 60 days of exercising the option.

B. The Ortman Company Waived any Defaults through its Continued Acceptance of Payments.

The Ortman Company accepted all the rental payments throughout the term of the Lease. (The Ortman Company also accepted rental payments after expiration of the original 3 year lease.) The Ortman Company waived all prior technical defaults.

In King-Blair Co v Schloss, 253 Mich 243; 234 NW 481 (1931), the plaintiff filed an action for specific performance of an option for an extension of a lease. The parties agreed to an option for the extension of plaintiff's lease for an additional term of ten (10) years. The defendant refused to honor the option, relying in part upon the plaintiff's subletting of a portion of the premises, in violation of the lease. The lease expressly provided that the option could be exercised only if the plaintiff complied with all terms

and conditions of the lease. The defendant argued that:

> Plaintiff had been in and was at the time of the institution of this suit, and at the time of the trial in default under the terms and covenants of its lease, the performance of and compliance with such covenants having been specifically made a condition precedent to the right to exercise the option.

King-Blair at 247.

The court acknowledged that the subletting of the premises was a violation of the lease, but affirmed the trial court's judgment for the plaintiff for specific performance of the option, reasoning that:

> However, it appears beyond question that this subletting was known to defendants and continued during the whole period without objection. . .[I]t would be inequitable to permit defendants to use it as a means of depriving plaintiff of its valuable rights under the option which it now seeks to have specifically enforced.

King-Blair at 247-48. As in King-Blair, The Ortman Company accepted all rent. The Ortman Company never afforded Metal Finishers written notice of a default, and took no action to terminate the Lease, or the option to purchase.

In Park Forest of Blackman v Smith, 112 Mich App 421; 316 NW2d 442 (1982), the plaintiff-lessor regularly accepted late rental payments from the defendant-lessee. The court found that the defendant

could reasonably expect that strict compliance was not required. Id at 428. Accordingly, Ortman's acceptance of payments constitutes a waiver of its right to strict compliance. Accord, McCranie v Rigsby, 172 Ga 860, 159 SE 233 (1931); Owners Illinois, Inc v Lakeshore Land Co, 457 F Supp 896 (WD Pa 1978); See Lessee's Breach of or Default Under Lease Agreement as Affecting his Right in Respect of Option to Purchase Under the Lease, 53 ALR 3d 435 (1973):

> The right of a lessee to obtain specific performance of an option to purchase under the lease, notwithstanding a breach of or default in the terms of the lease by the lessee, may be recognized where the lessor's acts preclude him from relying on the breach. Accordingly, the courts have generally held that the acceptance of rent after the lessee's breach or default in the terms of the lease constituted a waiver of the default so as to entitle the lessee to enforce the option to purchase.

Id § 8[a] at 449.

C. Specific Performance Was Appropriate

In Cimina v Broaich, 517 Pa 378, 537 A2d 1355 (1988), the tenant sought specific performance of an option to purchase. Defendant-lessor asserted that lessee failed to pay the real estate taxes, thereby breaching the lease agreement. This breach, lessor argued, defeated the claim for specific performance.

The court acknowledged that "[I]t is undisputed that the lease specified that the tenant must pay the real estate taxes on the leasehold premise". Cimina at

1357. In Cimina, however, lessor's wife paid the real estate tax each year, unaware of lessee's contractual obligation to make the payments. The court upheld the lessee's right to specific performance.

Applying fundamental principles of contract law, the court held that "only material failure of performance by one party discharges the other party: . . .an immaterial failure does not operate as such a discharge." Cimina at 1358; See Restatement of Contracts §274(1932). "[A] technical breach of a contract should not, ipso facto, defeat a claim for specific performance." Id

CONCLUSION

If Mr. Ortman has been aggrieved, it has been through the internal operations of The Ortman Company. Mr. Ortman claims Metal Finishers never had authority to occupy the premises - yet The Ortman Company admits that it intended to lease the premises, knew from the start that it was used for commercial purposes by Metal Finishers and determined to honor the option to purchase.

Unfortunately, the internal strife within The Ortman Company motivates Mr. Ortman to interfere with and employ any means to frustrate the legitimate property interests of Metal Finishers in its litigation with The Ortman Company.

The Michigan Circuit Court recognized there was no material dispute as to the facts and awarded summary disposition based upon the substantial case law governing this lease and its option to purchase. The Michigan Court of Appeals affirmed the decision after a review of the appeal on its merits. The Michigan Supreme Court saw no significant issues in the controversy and denied leave to appeal.

RELIEF REQUESTED

WHEREFORE, Plaintiff-Appellee Kalamazoo Metal Finishers, Inc. requests that this United States Supreme Court deny Mr. Ortman's Petition for Writ of Certiorari.

Dated: July 22, 1992

Respectfully submitted,

MILLER, CANFIELD, PADDOCK & STONE

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